



Community Guide to Hawai'i Land Conservation

*“He ali‘i ka ‘āina; he kauwā ke kanaka.”
“The land is a chief; man is its servant.”*

Mary Kawena Pukui, ‘Ōlelo No‘eau.

According to Hawaiian historian Mary Kawena Pukui,
“Land has no need for man, but man needs the land and works it for a livelihood.”



Introduction / Preface

Community members often ask Hawaiian Islands Land Trust, The Trust for Public Land's Hawai'i Program, and other land trusts how they can work with land trusts to save particular lands of natural and cultural significance. This guide is intended to help those community members, and applies to land that: 1) is privately-owned, 2) has significant natural, cultural, or agricultural resources, and 3) is threatened with uses that would harm the resources, such as subdivision and development.

Protecting a threatened special place can seem daunting or even impossible. Knowing who to call, what to research, and how to ask for assistance can be confusing. The Trust for Public Land and Hawaiian Islands Land Trust share this guide to clarify the voluntary land conservation process and empower communities across Hawai'i in protecting privately owned and threatened lands with cultural, agricultural, and/or ecological significance.

Voluntary land conservation – buying land for public agencies or community organizations or restricting land uses on private property with the cooperation of the landowner — has resolved heated land disputes and created win-win-win solutions that benefit private landowners, our environment, community, and future generations. Where land use is contentious, the process of collaboratively working toward the land's protection often begins a healing process that can build community resiliency and connections. Private donations of land or conservation easements can leave family and company legacies for future generations.

Land is the chief, man is its servant. Land provides man with everything needed to survive. But it is our responsibility to care for the land that provides us with food, water, and shelter. There is a reciprocal relationship between people and the land. Voluntary land conservation works within Western principles of property law. It is not a cure-all. Voluntary land conservation cannot resolve complex social, economic, and political issues relating to the overthrow of the Hawaiian government and the Mahele's mass dispossession of Hawaiians from land. Voluntary land conservation, however, can take tangible baby steps toward a more holistic and community-based model of ownership and stewardship of land that reconnects people to land, and rebuilds the reciprocal relationship between people, 'āina, and community.

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What Is Voluntary Land Conservation?

Voluntary land conservation involves conserving land with the willing participation of the landowner – receiving a land donation, buying land, or restricting land uses on property via a conservation easement. Sometimes, landowners have a love of the land and want to donate land or a conservation easement to a land trust. A conservation easement is a voluntary legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its conservation values. Other landowners are willing to sell land for conservation, or restrict their property from development, for the right price, through selling a conservation easement, or for a combination of cash and tax write-offs. The key to voluntary land conservation is that it is a negotiation and a voluntary process from which the parties (land trust and landowner) can walk away at any time. The landowner is a willing participant in the conservation of the land and is not forced to conserve the land through laws or regulations imposed by the government.



THE 5 PILLARS OF A SUCCESSFUL LAND CONSERVATION EFFORT

In any successful land protection effort, there are five factors or pillars that must be present. Land Trusts are the lei that connect these pillars together. Each pillar will be explored in this Community Guide.



VOLUNTARY LAND CONSERVATION ORGANIZATIONS OR LAND TRUSTS

WHAT ARE LAND TRUSTS?

Across the country (including Hawai‘i), hundreds of non-profit land trusts are conserving land in partnership with local community members and organizations, public agencies, and elected officials. Land trusts are private, non-profit, tax-exempt organizations that conserve land by facilitating or acquiring land or conservation easements, or by stewarding land or conservation easements. In general, a land trust must qualify as “public charity” under Internal Revenue Service regulations, meaning that they must receive a substantial amount of support from the general public and must meet a “public support” test.¹ The Land Trust Alliance is a nationwide coalition of land trusts that has developed best practices and standards that accredited land trusts follow. In Hawai‘i, accredited land trusts include (in no particular order) – The Nature Conservancy, Hawaiian Islands Land Trust, and The Trust for Public Land.

WHICH LAND TRUSTS WORK IN HAWAI‘I, HOW DO THEY DIFFER, AND WHICH ONE SHOULD I CONTACT?

There are a number of land trusts that work in Hawai‘i. Some are very small – with all volunteer staff and a small geographic area within which they work. Others operate statewide and employ dozens of professional staff and are part of national or international conservation organizations. Each organization has a slightly different mission and plays a different role in community efforts to conserve land throughout Hawai‘i. The land trust community in Hawai‘i is small, and regularly collaborates on issues of common interest (e.g., public funding for land conservation) and refers projects to each other. A list of land trusts, their respective missions, and their contact information is included in Appendix A.

Community members should let the land, and how that land is most likely to be protected and stewarded, guide which land trust you reach out to for assistance. Since Hawai‘i’s land trusts work collaboratively, if you call one of the land trusts, it will likely refer you to the land trust that can best help you. Often, two or more land trusts work together on a project.

LAND CONSERVATION METHODS

Land trusts use essentially two methods to conserve land: (1) fee simple² acquisition through donation or purchase (or a combination of both – e.g., a discounted purchase and donation of value), and (2) restriction of land uses on private land through conservation easements, discussed in detail below. There are key questions in any land conservation project – the answers to these questions provide the framework for community/land trust efforts to conserve land and will be covered in subsequent sections.

- Is the land owned by government or a private party?
- Is the land available for sale (willing seller)?
- Does the landowner want to continue to own the land and restrict land use with a conservation easement?
- What will it cost?
- How long do we have to put together a deal? Timing?
- Where will the money come from?
- Who will own/manage/steward the land long-term?

Early on in a project, community members and land trust partners gather enough information to identify critical issues and narrow down the parameters of the potential transaction or identify needs for further research. Conservation projects take patience, flexible thinking, and common sense. There is no linear process or precise formula, however. This guide attempts to outline some of the basic elements and best practices.

Deciding on the best method to conserve and protect land is the first step in solidifying your project design. There are number of methods that exist to conserve land. We explore below a number of existing methods to conserve land – including Donation, Fee Purchase, Conservation Easement, Buy and Hold / Interim Purchase, and Other Conservation Techniques.

DONATION

A landowner may love Hawai'i and the land and decide to donate his/her land for conservation. If the land trust or non-profit organization is a tax exempt public charity under IRS regulations, the landowner may qualify for favorable tax treatment – but the landowner should consult with his/her own attorney on whether a tax deduction will be allowed, and the documentation (e.g., an appraisal) needed to qualify for the tax deduction.

From the community's perspective, a landowner willing to donate land seems like a “no brainer” – why wouldn't a land trust, public agency, or other non-profit accept a donation of “free” land? However, community members should expect public agencies, land trusts and non-profits to conduct their own due diligence to determine whether they can accept a donation of land. Common questions are:

- Does the land have resources on it that are worthy of conserving and consistent with the mission of the land trust, public agency, or non-profit organization?
- Are there risks associated with the land (e.g., rockfall, flooding, past environmental contamination, houseless, trash/dumping, illegal parties/raves), and how can the risks be mitigated?
- What will be the ongoing management/maintenance costs of owning the land (e.g., real property taxes, signage, fencing, regular monitoring, ongoing neighbor/community relations and outreach, restoration costs)? How will the costs be covered?
- Will the public be allowed to access the land, and what are potential liabilities or community concerns (e.g., parking)?
- Does the surrounding community support the conservation of the land or the potential for public access to the land?

These are just a few of the questions a land trust, public agency, or other organization might consider before accepting donated land. Land trusts or non-profit organizations may also request a substantial cash endowment donation from the landowner so that interest earned from the endowment can fund future management and stewardship costs.³

FEE PURCHASE

The most straightforward land protection method is outright fee simple acquisition of the land – the new owner of the land will have complete control over it, subject to any restrictions imposed by the sources of funding used to acquire the lands. The land trust will consider the same questions discussed above with respect to donation, but in addition, will also ask what the value of the land might be or what an acceptable purchase price might be for the landowner (discussed in page 19), and whether there are public and private sources of funding to purchase the land (discussed in page 30). If the land trust is serving as a facilitator or intermediary in the land purchase, it may investigate the capacity of the non-profit or government entity proposed to own and manage the land long-term. If capacity is lacking, the land trust may work with the non-profit or government entity to enhance its capacity so that it is prepared for land ownership and management.

Hakipu‘u Lo‘i Kalo

HAKIPU‘U, O‘AHU

“Remember your pule. And the pule is to the space. Let the space open the path for you and keep walking. You are not walking alone, but you gotta keep walking, even if it’s just little steps, you gotta step. Everyone asks, ‘What can I do in this space?’ We’re only here for a short time. We gotta ask ‘What does this space need from us right now?’ so that this space is good forever and ever, long after we’re gone.”

— Kahiau Wallace, President, Hō‘ala ‘Āina Kūpono



Kamehameha Schools Explorations program learn from the ‘āina at Hakipu‘u.

SQUARE FEET/ACRES: 1.5 acres

PURCHASE PRICE: \$1 million

FUNDING SOURCES:

- \$350,000 – State Legacy Land Conservation Program
- \$650,000 – City and County of Honolulu Clean Water & Natural Lands Program

COMMUNITY OWNER: Hō‘ala ‘Āina Kūpono

PARTNER: The Trust for Public Land

CONSERVATION EASEMENT CO-HOLDERS: City and County of Honolulu and Hawaiian Islands Land Trust

NOTES: Hō‘ala ‘Āina Kūpono hosts ‘āina educational programs and volunteer work days.

In many cases, a land trust may own land, but partner with other organizations on an informal or formal basis (e.g., a lease, license, right of entry) to steward and manage the land. For example, while Waimea Valley/Hi'ipaka LLC owns Pu'ukua, a very sacred site associated with Kahuna Nui (High Priest) Hewahewa, Hi'ipaka LLC works closely with Hewahewa's descendants to manage the property. Hawaiian Islands Land Trust owns Maunawila Heiau but manages the land guided by a steering committee that includes Ko'olaupoko Hawaiian Civic Club, Hau'ula Community Association, and the former landowners, the McGregor 'Ohana. The steering committee provides community input, vision, and knowledge. Hawaiian Islands Land Trust's staff care for the heiau complex and host educational programs and volunteer stewardship days on the land.

Discounted purchases are also possible – where the landowner sells for less than the appraised fair market value⁴ of the land, and takes a charitable deduction for the difference. As discussed above, the landowner should consult with his/her own attorney on whether a tax deduction will be allowed, and the documentation (e.g., an appraisal⁵) needed to qualify for the tax deduction. There are also burdensome requirements for accredited land trusts to document a land value donation, including hiring outside third-party counsel to render an opinion that the land value donation does not constitute tax shelter abuse.

CONSERVATION EASEMENT

A conservation easement is a voluntary legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its conservation values. When a landowner sells or donates a conservation easement to a land trust, the landowner agrees to restrict the type and amount of development that may take place on the land. For example, an owner of agricultural land might give up the right to subdivide and build residences on the land, and the right to seek changes in zoning that would allow more development (i.e., “up-zoning”). All conservation easements must provide public benefits, such as preserving historically or culturally important land, protecting native habitats or ecosystems, preserving agricultural, farm, or ranch land, protecting watersheds, and preserving open space and public access.

Conservation easements are not simple to draw up – there is no “one size fits all.” All conservation easements require careful research, thinking, and legal documentation. The landowner and the land trust must carefully negotiate unique rights and restrictions over the property, which will be **perpetual**. The types of restrictions in a conservation easement will depend on what you are trying to protect. The landowner and the conservation easement owner/ holder can decide on restrictions and uses that are best for the land. If a landowner wants to build a caretaker residence, a community or interpretive center, a traditional hale, or a certified kitchen that aligns with the conservation easement's conservation purposes, the landowner can reserve those rights by setting aside a certain number of acres and location for future construction. A conservation easement can protect the whole property or part of it. While every conservation easement is unique, in general, conservation easements usually limit development and future subdivision, may permit farming, ranching, restoration activities, and sustainable forestry. Some conservation easements require some type of public access (e.g., managed access), while others do not.



Aunty N'ami Kama, a lineal descendant of Waimea Valley on O'ahu, shares about the land and its history with project partners.



Moana Beamer hugs husband Keola Beamer at Kuamoʻo Battlefield and Burial Grounds on Hawaiʻi Island near the completion of the land protection effort.

Conservation easements are permanent and “run with the land,” meaning that the original owner, and all future owners must comply with the terms of the conservation easement. The land will be conserved for the public benefit purposes articulated in the conservation easement forever. Conservation easements are recorded in the Bureau of Conveyances or Land Court, just like deeds and mortgages. Conservation easement restrictions will bind all successor owners. The landowner’s heirs, subsequent purchasers, even a bank that acquires the land via a foreclosure, will be subject to and must comply with the terms of the conservation easement.

Conservation easements have a monetary value – the landowner is giving away certain rights over the land. As discussed in page 19, an appraiser can appraise the value of the conservation easement. Where a conservation easement significantly restricts future land use and removes development rights on a property, the appraised conservation easement value can be close to the fee simple value. Where a conservation easement partially restricts future

land use but reserves significant property rights to the landowner, the appraised conservation easement value will be significantly less than the fee simple value. There are private and public funding sources to purchase conservation easements over land, discussed in page 30. Landowners can also reap tax benefits from donating all or a portion of the conservation easement value. Community members should discuss these options with their land trust partner.

Conservation easements are a good option to conserve land where there are limited or no resources to manage and maintain the land. The landowner continues to own the land, subject to the conservation easement restrictions. A land trust or public agency owns/holds the conservation easement and conducts annual monitoring to ensure that the landowner is complying with all of the conservation easement restrictions. If there is a violation of the conservation easement terms, such as the building of a house when the conservation easement prohibits development, the land trust must enforce the terms of the conservation easements. In extreme situations, the land trust will take legal action to ensure that the landowner complies with the conservation easement terms.

BUY AND HOLD/INTERIM PURCHASE

Raising funding for a conservation land purchase can take a long time – 18 months to three or more years, depending on the sources of funding, funding application cycles, and the value of the land. Private landowners are often impatient and want to sell the land immediately. And, if the land is highly desirable or developable, there may be other potential buyers waiting in the wings to purchase the land quickly. Occasionally, land trusts are able to work with private foundations and philanthropists to borrow acquisition funds for zero or below market interest rates to purchase threatened land, giving the land trust and other community partners time to raise public and private funding to repay the loan and transfer the land to the “takeout” partner – a public agency or other non-profit organization that will own and steward the land in the future.

This type of “buy and hold” transaction is very rare and reserved for projects that have high conservation value, but are imminently threatened by sale/development. Legal documentation of these types of loans or “project related investments” is complex and time-consuming. These types of transactions expose the land

trust to a great deal of risk – the obligation to pay interest, insurance, and taxes for every month that the land trust owns the land, to manage the land, to expose itself to liability, and to raise funds to pay back the loan. During the period between the time that the land trust buys the land and “sells” the land to the take-out partner, the land trust often provides the take-out entity with a right-of-entry, lease, or license, to use the land. However, the land trust usually expects the take-out partner to pay for insurance naming the land trust as an additional insured, and pay real property taxes and carrying costs (e.g., interest payments).

In Hawai‘i, only The Nature Conservancy and The Trust for Public Land have engaged in these types of “buy and hold” transactions due to their complexity and risk.

OTHER CONSERVATION TECHNIQUES

Other conservation techniques include the buying out of partial interests such as mineral rights. For example, in parts of the Western continental United States, land trusts have bought out “fracking rights” beneath important forest and habitat. Land trusts also buy partial interests in land — where the landowner sells or donates land to the land trust but retains the right to live on the land until his/her death (known as a “life estate”). Some land trusts have purchased partial interests in land to prevent unwanted development of the land. However, this is a risky and complex strategy and requires the land trust to be willing to be a part-owner with other owners who may not share the land trust’s conservation values.

WORKING WITH LAND TRUSTS

DESIGNATE A LAND TRUST POINT OF CONTACT TO COMMUNICATE/NEGOTIATE WITH LANDOWNER

Community members who want to conserve and steward land should strongly consider working with a land trust. Land trusts have special expertise in land conservation private and public funding sources, land and conservation easement purchases and donations, advocacy, public policy, and tax benefits. Community organizations and individuals who have opposed a landowner’s development proposals may have developed an adversarial relationship with the landowner. The landowner and the community may not trust each other. The landowner may not be willing to negotiate with community members who have erected obstacles to the landowner’s development proposal. A land trust is a neutral party that can negotiate with the landowner to achieve community conservation goals. A land trust can help community members sort through different conservation strategies, and serve as a common point of contact to communicate and negotiate with the landowner.

However, community members should be keep in mind that land trusts and community groups are separate entities with their own decision-making processes. Land trusts can work with and provide community groups with information, and make recommendations or suggestions, but land trusts do not make decisions for the community. By the same token, land trusts have their own by-laws and



At Kalaekaua'oa or Kahuku Point on O'ahu's North Shore, North Shore Community Land Trust, partners, funders, and elected officials join a site visit to learn about the native restoration efforts.

North Shore of O‘ahu Conservation Projects

“The emotional highlight of these campaigns was the community celebration that brought together all the people who had worked so hard and so long on these projects. The pure joy of success not for self but for the public trust, for future generations — by diverse individuals with many different talents that mixed together made these magic moments happen. To see and greet everyone, in person, on the land, happy, and proud of the collective effort — that was chicken skin.”

—Denise Antolini, North Shore community member.



Volunteers gathered to steward Kahuku Point/Kalaekauna‘oa

Community members in the North Shore of O‘ahu have been strong advocates for conservation for many decades, leading efforts to protect Pūpūkea-Paumalū, Waimea Valley (upper and lower valley), makai and mauka lands around The Turtle Bay Resort, and many others. The community’s efforts regarding Kahuku Kawela Forever (Turtle Bay Makai) are detailed below:

SQUARE FEET/ACRES: 634 acres total

- 12.5 acres fee simple owned by City and County of Honolulu (leased back to resort)
- 52.5 acres fee simple owned by State (leased back to resort)
- 569 acres under conservation easement owned by the State

PURCHASE PRICE: \$45 million

FUNDING SOURCES:

- \$35 million – State General Obligation Bonds (debt service - \$1.5 million transient accommodation tax, \$1.5 million State Legacy Land Conservation Program)
- \$7.5 million – City and County of Honolulu
- \$2.5 million – U.S. Department of Defense Readiness and Environmental Protection Integration (REPI), Army Compatible Use Buffer (ACUB) program through a cooperative agreement between U.S. Army Garrison Hawai‘i and The Trust for Public Land

OWNERS: State, City, and Turtle Bay Resort (subject to conservation easement)

PARTNERS: The Trust for Public Land & North Shore Community Land Trust (and many others)

CONSERVATION EASEMENT HOLDER: State of Hawai‘i

NOTES: Park areas owned by State and City near Kawela Bay and over 8 miles of coastal trails are open to the public but maintained by the Resort; public parking for ocean access doubled to 80 stalls; free golfing for Kahuku High School golf team; increased shoreline setback at Keiki Pond. North Shore Community Land Trust hosts volunteer work days at Kahuku Point to restore coastal vegetation and protects Albatross nesting areas.

processes that each land trust must follow. For a productive relationship, community members and land trusts must have mutual respect for each other's organizational integrity and governance. Land trusts are **not** the community's real estate agent or broker.

MEMORANDUM OF UNDERSTANDING

If a land trust and community groups decide to move forward on a land conservation project (e.g., to initiate negotiations with a landowner, start raising funds), a best practice is to develop a Memorandum of Understanding ("MOU") between the land trust and the various community groups or coalition that outlines what the expectations between the groups are. Some of the items that might be covered in an MOU include:

Regular meetings

The parties to the MOU should consider agreeing to meet regularly to keep each other updated on progress of the negotiations, fundraising, etc. The MOU can provide a regular time (e.g., once a month), with less or more frequent meetings upon mutual agreement of the parties.

Expenses/Costs related to project

The MOU should identify anticipated costs for the project, and who will pay for them. The land trust should be able to come up with a projected budget of expenses related to the project or transaction – appraisal, survey, title reports, environmental Phase I reports, staff time. An open and honest discussion should happen between the land trust and community groups about anticipated costs and how the land trust and the community groups plan to cover these costs (e.g., a private capital campaign, foundation support).

Fundraising

Typically, the land trust will take the lead in any public fundraising as they usually have experience in applying for funding from the different sources of public funding. However, community support is needed at all levels – in hearings, meetings, testimony, etc., and the respective roles of the land trust and the community group should be outlined in the MOU.

If private fundraising is needed for the purchase of the land, the land trust and community members should discuss costs related to the purchase (e.g., appraisal, survey), a management endowment, staff time (e.g., legal review, staff time to draft applications for funding), and costs of a fundraising campaign (e.g., postage, website hosting). The community and land trust should have an open and transparent discussion of the budget/expenses, who will pay the expenses, what the fundraising need will be, potential sources of funding, and the roles of the community groups and the land trust.

- What is the total fundraising need (including costs of the fundraising campaign)?



Ka Iwi Coalition volunteers and land trust staff work into the night to mail requests for the last funds needed to complete Ka Iwi Coast's protection.

- Who takes the lead in drafting the case of support and funding applications?
- Who takes the lead in receiving donations, and providing gift acknowledgement letters?
- Will there be a campaign website or will one organization host the digital campaign?
- If a mass mailing is envisioned, what is the cost of that, and who is physically going to print, collate, fold, and mail the mass mailing?
- Each organization’s role should be clearly outlined in the MOU.

Communications with media, on social media, elected or agency officials, or the general public

The MOU should cover how the parties are to handle communications with media, social media posts, elected/agency officials, and the general public. Hard feelings often arise when one organization takes credit for a project without recognizing partner organizations, so the MOU should clearly state how the partners should be recognized in press releases, social media, and presentations regarding the project. Co-branding of printed materials, maps, fact sheets, and cases of support may be possible. If the project is successful, the parties should consider signage crediting the various partners and funding sources.

Capacity Building

In some cases, community organizations and the land trust may agree that the land trust will provide capacity building training so that the community can raise funds and steward land on their own. If so, the respective roles/training should be outlined in the MOU.

Post-Acquisition Stewardship

If community organizations are going to partner with the land trust on stewardship, roles and expectations should be covered. If it is too soon in the process to flesh these roles out – that is fine – the parties can just state their intentions in the MOU, with a time frame in the future to revisit these issues when the project is more fleshed out.

A sample MOU is attached as Appendix B.



Mark Stride, a kalo farmer in Luluku, Kāne’ohe, O’ahu, explains to community members, land trusts, elected officials, and government agencies the area’s significance. The group envisions restored lo’i kalo and water systems.

Ka Iwi Coast Mauka

MAUNALUA, O'AHU

“Enter the arena of conserving your special place with unconditional aloha, acceptance of the challenges, and welcoming of all. Remember not everyone views your special place with the same lens so lean on the land to help you inspire, educate and find balance and patience to enjoy the journey and do not acknowledge anger or fear. It is worth it – every minute was empowering, exciting and humbling.”

—Elizabeth Reilly, President, Livable Hawai'i Kai Hui



Ka Iwi Coalition celebrates a large gift that launched the successful community fundraising campaign.

SQUARE FEET/ACRES: 182 acres

PURCHASE PRICE: \$3.65 million

FUNDING SOURCES:

- \$1 million – State Legacy Land Conservation Program
- \$2.5 million – City and County of Honolulu Clean Water & Natural Lands Program
- \$150,000 – Private donations

COMMUNITY OWNER: Livable Hawai'i Kai Hui

PARTNER: The Trust for Public Land

CONSERVATION EASEMENT CO-HOLDERS: City and County of Honolulu & The Trust for Public Land

NOTES: The Trust for Public Land and Livable Hawai'i Kai Hui ran a very successful joint campaign to raise gap funding for acquisition, stewardship/management funds, and project acquisition costs. Livable Hawai'i Kai Hui hosts annual “Exploration Days” – guided hikes on the property, and hosts volunteer work days to maintain and expand the trails and monitor native vegetation.

Basic Information to Gather with Land Trust Partner

The community and land trust partner will need to gather basic information to determine whether the property in question is a viable voluntary land conservation project. Basic questions about ownership, who talks with the land owner about voluntary conservation options, the possible value/price of the land, the resources on the land, community support for conservation, likely partners/supporters, the likely sources of funding, and possible structure of the transaction, need to be answered and discussed before starting serious discussions or negotiations with the landowner.

WHO OWNS THE LAND?

ADDRESS & TMK

Sometimes, it is not obvious who owns the land – the landowner may be represented by brokers, agents, consultants or attorneys, or the landowner may be a corporation or limited liability company or LLC. It may not be clear who the real owner is and who has decision-making authority. If the landowner has a real estate agent or broker, these agents are an appropriate landowner contact.

You will need at minimum, the address and/or the tax map key (“TMK”) number to start your inquiry. All of the counties have on-line real property tax map systems where the public has access to maps, TMK numbers, names of owners, recent building permit information, and real property tax assessed values. If you do not know the address or TMK, you can simply enlarge the map of the island until you can identify your neighborhood and the parcel – click on the parcel, and information about the parcel (address/TMK) should appear. The county links are below:

City and County of Honolulu: <https://www.qpublic.net/hi/honolulu/search.html>

Maui County: <http://qpublic.net/hi/maui/>

Hawai'i County: <http://www.hawaiipropertytax.com/search.html>

Kaua'i County: <http://www.qpublic.net/hi/kauai/search.html>

BUSINESS REGISTRATION NAME SEARCH

If the landowner is a company and you are not sure who owns the property or has decision-making authority (and there is no real estate agent or broker), a useful source of information is the Department of Commerce and Consumer Affairs Business Registration Division, where you can search the name of businesses and identify the directors and owners.

<https://hbe.ehawaii.gov/documents/search.html>

COMMUNICATIONS WITH LANDOWNER

As discussed previously, communities working with a land trust should designate in their MOU a single land trust point of contact to communicate with the landowner regarding a potential voluntary land conservation purchase or donation. The community members and the land trust need to present a united front to the landowner. The worst thing that can happen is undisciplined communications from multiple sources where the landowner feels that the land trust and community partner are disorganized, or sees that he or she can “play” members of the community against each other or the land trust, and convince the community to pressure the land trust to pay more or act more quickly than the land trust can responsibly promise. The key community groups may have one or more very experienced and knowledgeable negotiators. The land trust and community should agree on who should lead the negotiations and communications with the landowner. We recommend that all communications with the landowner funnel through a land trust single point of contact so there is no confusion or mixed messages sent from multiple sources to the landowner, and so that the land trust can keep the core community group informed.

The land trust needs to build trust and clear communication with the landowner to negotiate a land conservation deal and community members should avoid inserting themselves into the negotiations and creating confusion or mixed messages. The land trust should keep the community coalition regularly informed of progress. Because Hawai'i is a small place, it is very likely that community coalition members may run across the landowner or the landowner's agent at social or other events. If the land conservation project arises as a topic of conversation, community members should make it clear to the landowner that the land trust speaks for the group regarding any potential deal. The community members should, as soon possible, relay any communication they have had with the landowner to their land trust point of contact so there is no misunderstanding as to what information or message the landowner received.

WILLING SELLER?

A fundamental question in any voluntary land conservation transaction is whether there is a willing seller of the land. The land trust should be leading communications with the landowner and should have researched the landowner – whether it is an individual, family, or company. It is crucial that all owners of the land agree/ consent to sell the land and are on board with a conservation purchase, which can take 18 months-3+ years to complete. Public funding applications will also require a “willing seller letter” – a letter signed by the landowner indicating that it is willing to sell the land if price and other specific terms can be agreed. An example of such a letter is in Appendix C.

Waikapuna

KA'Ū, HAWAII ISLAND

“Soon after the conservation purchase was completed, I hiked to the edge of the pali to give thanks. As I gazed across the landscape, there was a profound feeling of peace which followed knowing that after so many years, these resting places of my ancestors were finally safe.”

—Keoni Fox, Director, Ala Kahakai Trail Association



Ala Kahakai Trail Association and Trust for Public Land staff leading a site visit for public funding commission.

SQUARE FEET/ACRES: 2,317 acres

PURCHASE PRICE: \$6 million (landowner donated \$1.3 million in value)

FUNDING SOURCES:

- \$2 million – State Legacy Land Conservation Program
- \$4 million – County of Hawai'i Public Access, Open Space, and Natural Resources Preservation Program (PONC)

COMMUNITY OWNER: Ala Kahakai Trail Association

PARTNER: The Trust for Public Land

CONSERVATION EASEMENT HOLDER: County of Hawai'i

NOTES: Conserves part of the Ala Kahakai Historic Trail, ancient springs, and a historic fishing village. Renowned Native Hawaiian scholar Mary Kawena Pukui spent summers with her grandmother at Waikapuna, upon which her seminal work, *The Polynesian Family System in Ka'ū*, is in part based.

WHAT IS THE VALUE OF THE LAND?

Non-profit tax-exempt organizations like land trusts are required by IRS regulations to avoid acts of private benefit or “private inurement” (i.e., using tax exempt dollars from charitable donations to benefit a private person or entity). When a land trust buys land, it can pay no more than the appraised fair market value (FMV) of the land to ensure that it is not using tax-exempt donations to enrich and over-compensate the landowner (i.e., pay more than the land is reasonably worth). Public funding sources also require that the price paid is fair and also require an appraisal and sometimes a review appraisal (where a separate third-party appraiser reviews the work of the original appraiser and certifies the report complies with applicable standards). But how do you estimate the value of the land before an appraisal is completed? The following information provides you with some starting data.

REAL PROPERTY TAX ASSESSED VALUE

The counties all keep records of the real property tax assessed value of land. Usually, the real property tax assessed values lag behind market values – so in general, you can expect the appraised FMV to be at or higher than the real property tax assessed value. Links to the county websites are in page 16.

RECENT SALES/LISTINGS IN THE AREA

Community members or realtors from the area may be aware of recent sales or listings in the area – this information can help inform the land trust and community members of ballpark estimates of the potential value of the land.



Hālau Nā Lei Kaumaka O Uka practicing its Merrie Monarch kahiko E Manono at Kuamo'o.



Kāne'ohe community leaders, State DLNR staff, land trust staff, farmers, elected officials, and keiki gather to learn about and plan for the future of the lands behind them.

PAST APPRAISALS OF LAND IN AREA

Past appraisals of land can also provide ballpark estimates of value. Sometimes, the land trust or other partners may have done appraisals of other land in the area that can be helpful.

APPRAISAL

Different public funding programs may require different appraisals, and the land trust should know the requirements of the different programs. Federally funded projects require compliance with the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) or “yellow book” appraisal standards, which can be more costly. State and County funded projects will usually require at a minimum, an appraisal that complies with the Uniform Standards of Professional Appraisal Practice (USPAP). Many programs will require that a public agency staff person review and approve the appraisal. Some programs may require the buyer (who will receive the grant funds) to hire a third-party appraiser to review the appraisal to certify that the appraisal complies with the applicable standard. The land trust should be familiar with these different standards and can guide this process.

WHAT ARE THE NATURAL, CULTURAL, AGRICULTURAL, SCENIC OR OPEN SPACE RESOURCES ON THE LAND?

All of the publicly funded land conservation programs require that the land have some resource value that Congress, the Legislature, the County or City Council, or the public have recognized as important. As you investigate the land, be on the lookout for the following types of resources, and find past reports, studies, environmental impact statements or environmental assessments, archeological studies, botanical and biological studies, and geological studies of this land or nearby land. The landowner is usually a good source of past studies/material relating to resources on the land. If the landowner has proposed a past development, there may be environmental assessments or environmental impact statements that have been completed that are good sources of information.

CULTURAL RESOURCES

- i. 'Iwi Kūpuna (burials)
- ii. Historic sites (e.g., heiau/temples, ko'a/shrines, house sites, battlefields, canoe landings, lo'i, birthing stones).
- iii. Cultural landscapes (e.g., the Kohala field system, Waipio Valley lo'i system, Mauna Kea, entire villages or ahupua'a)
- iv. Wahi Pana (storied places) or Mo'olelo (e.g., places where Hi'iaka traveled, Kuamo'o burial bounds and battlefield)
- v. Places where traditional/cultural practices occur (e.g., place where maile or other plants gathered for hula, lā'au lapa'au, or where ceremony takes place)

NATURAL RESOURCES

- i. Native Plants (e.g., koa or 'ōhi'a forest)
- ii. Native or Migratory Animals (e.g., native mammals such as the Hawaiian monk seal and Hawaiian hoary bat, native wetland birds such as the 'alae 'ula and ae'o, native forest birds such as the 'elepaio and 'iwi, migratory mammals such as the humpback whale, migratory birds such as the Laysan albatross and kōlea)
- iii. Special ecosystems (e.g., wetlands, bogs, estuaries, springs, streams)

AGRICULTURAL RESOURCES

- i. Traditional Hawaiian Agriculture/Aquaculture
 1. Fishponds
 2. Lo'i Kalo
 3. Dryland cultivation/terraces
- ii. Modern Agriculture
 1. Diversified Agriculture/Truck Farming
 2. Organic/Natural/Regenerative/Biodynamic
 3. Ranching/livestock

OPEN SPACE

- i. Scenic Views (e.g., Ka Iwi coast)
- ii. Rural/Country Character
- iii. Open space in urban or highly developed areas

EDUCATIONAL

- i. 'Āina-based educational programs – is the land being used for educational programs or is there potential for educational programs on the land and partners/resources to run them?

HELPFUL BOOKS

Place Names of Hawai'i

'Ōlelo No'eau: Hawaiian Proverbs and Poetical Sayings

Sites of O'ahu, Sites of Maui

Native Planters in Old Hawai'i

Hānau Ka Ua

HELPFUL WEBSITES

OHA's Kipuka Database:
<http://kipukadatabase.com/>

Papakilo Database:
<https://www.papakilodatabase.com>

AVA Konohiki (Ancestral Visions of 'Āina):
www.avakonohiki.org

Ulukau:
www.ulukau.org

Nupepa (Hawaiian newspapers):
www.nupepa.org



Kuamo‘o Battlefield & Burial Grounds

KUAMO‘O, HAWAI‘I ISLAND

“Hold to your values and find partners who believe in your place and vision. Naysayers and skeptics are easy to find in our world today but at least from our experience, you can accomplish what might seem impossible to some with kūpuna support, the right team, and vision.”

—Kamanamaikalani Beamer, PhD, Executive Director, Aloha Kuamo‘o ‘Āina



Schattauer and Beamer ‘Ohana at Kuamo‘o

SQUARE FEET/ACRES: 47 acres

PURCHASE PRICE: \$4 million

FUNDING SOURCES:

- \$3 million – State Legacy Land Conservation Program
- \$500,000 – Office of Hawaiian Affairs
- \$500,000 – Private donations

COMMUNITY OWNER: Aloha Kuamo‘o ‘Āina

PARTNER: The Trust for Public Land

CONSERVATION EASEMENT HOLDER: Office of Hawaiian Affairs

NOTES: Aloha Kuamo‘o ‘Āina hosts volunteer work days and ‘āina based educational programs.

Structure of Transaction

The land trust should work with the community and landowner to determine the structure of the transaction – donation, fee or conservation easement purchase, and timing.

WHAT IS BEST FOR THE LAND? WHAT MAKES SENSE? FEE PURCHASE/DONATION OR CONSERVATION EASEMENT PURCHASE/DONATION?

Because these types of conservation transactions are voluntary, the landowner’s preferences may limit choices for the structure of the transaction. The landowner may only want to sell their land, and may not be open to a conservation easement. Again, the land trust single point of contact should discuss these options with the landowner and report back to the community.

TIMING

The timing of the transaction will often be determined by: (1) the landowner, and (2) the public funding cycles. The landowner may not be willing to wait, and there may be many back up offers. In very rare occasions, a land trust may be able to work with private foundations or funders to finance a buy and hold. In most cases, timing will be determined by public funding cycles – federal funding takes a long time to secure (2+ years). State and County funding sources may take less time. In general, multiple public funding sources mean the greater coordination and legal and staff time, lengthening the time it takes and increasing the cost to complete a transaction.

FUTURE OWNER & STEWARD (“TAKEOUT”)

WHAT IS BEST FOR THE LAND?

In some cases, it will be obvious what entity should own and steward the land – e.g., MA’O Organic Farm wants to buy land adjacent to its existing farming operation. The Farm has an excellent track-record and is strongly supported by the surrounding community.

In other cases, it is not so obvious and there may be disagreement amongst community members about the appropriate entity to own/steward land. Ideally, the land trust and community partners should “talk story” with potential stakeholders, neighbors, and community members about the opportunity, and evaluate non-profits and government agencies who could be the potential future owner and steward(s) of the land. Land trusts sometimes refer to the public agency or non-profit organization that will own and steward the land in the future as the “takeout” partner. Land trusts and their community partners will want to ask:

- What is best for the land? What is the ideal future long-term vision for the land?
- What/who is the most appropriate entity or entities to own and steward the land or the conservation easement? Are these entities willing to do so?
- Do these potential “takeout” entities have the capacity – staff, volunteers, and financial resources – to responsibly own and manage the land in accordance with the restrictions of the applicable public funding programs?
- Can the potential “takeout” entities maintain and file the necessary paperwork to comply with the public funding restrictions and their own non-profit tax-exempt status?
- Do community members and stakeholders support the “takeout” entities’ roles of owner or steward of the land?
- Are additional partners needed/available where there is a lack of capacity?

Given the history of land in Hawai’i, some of these discussions may be heated and it is important to keep in mind that participants are trying to do their best for land and start a healing process of transforming privately owned land into a community resource.

IS A PUBLIC AGENCY WILLING TO OWN OR STEWARD THE LAND AND/OR OWN/MONITOR A CONSERVATION EASEMENT? HOW WILL THE AGENCY SUSTAIN MANAGEMENT OF THE LAND AND/OR ENFORCEMENT OF THE CONSERVATION EASEMENT?

Many federal funding sources require that a government entity – e.g., National Park Service, State Parks, State Division of Forestry and Wildlife, or a County – own the land. If these types of federal funding sources are the only likely funding source, then public agency ownership may be the only option. However, it is important to discuss conservation projects with agency staff — are staff enthusiastic about the project and does the agency have capacity and financial resources to own/manage the land? How can the agency sustain management and stewardship efforts? Is the agency open to working with community members to help to steward the land? Are their models of community stewardship or memoranda of agreement between the agency and community groups?

Similarly, some government entities (e.g., the City and County of Honolulu) will own/hold conservation easements, but are concerned about sustaining its monitoring activities and will require a land trust to be an administrative co-holder. As the administrative co-holder, the land trust will monitor the land annually to ensure that the landowner is following the restrictions in the conservation easement, and will enforce those restrictions, if necessary. The land trust has the primary responsibility to monitor and enforce the conservation easement, and the government agency has the secondary or “backup” responsibility to monitor and enforce the conservation easement.

ARE THERE NON-PROFITS WILLING TO OWN OR STEWARD THE LAND AND/OR OWN/MONITOR A CONSERVATION EASEMENT? HOW WILL THEY SUSTAIN MANAGEMENT OF THE LAND AND/OR ENFORCEMENT OF THE CONSERVATION EASEMENT?

Non-profit organizations and non-profit land trusts can also own or steward land or conservation easements, and the same questions discussed above must be posed and answered by their respective governing boards of directors. Most land trusts establish conservation easement stewardship endowments – requiring that, for each conservation easement, a certain amount of cash be deposited into a perpetual endowment account that spins off enough interest or income each year to finance any annual monitoring responsibilities and legal costs if enforcement of the conservation easement be needed.

PARTNERS

Land conservation is extremely collaborative. Partners are key in building support for public funding for the acquisition, discovering more about the land, its resources, and history, and developing stewardship and educational opportunities. Ask yourself, who else supports preservation of this land?

Brainstorm with your supporters/core group. Are there kupuna who can be interviewed about the history of the land? Any local educators or scientists who might be interested in the resources on the land and provide free or low cost surveys/information about the resources on the land? Can any of the following types of organizations help in the future with stewardship or educational programming or writing letters of support to public funding commissions or agencies? The following is a non-exclusive list of organizations or groups to think about approaching for support or partnerships.

- Local community members & organizations (e.g., neighborhood associations, local town business associations, Lion’s Club, Outdoor Circle, Sierra Club Chapter, HI’s Thousand Friends, Mālama Mānoa).
- Native Hawaiian organizations (nearby Hawaiian Homestead Associations, Office of Hawaiian Affairs, ‘Aha Moku Council, Hawaiian Civic Club for the area)
- Lineal or Cultural Descendants (Native Hawaiians who descend from the lands or surrounding lands that you are working to conserve).
- Hawaiian cultural practitioners that use the land you are working to conserve, or that would want to restore cultural use of the land once conserved (e.g., fishermen, halau who may gather flowers or plants for lei or other adornments, people gathering limu or other marine resources).



Ka Iwi Coalition, Mālama Hōnua Public Charter School, The Trust for Public Land, elected officials, agency leaders, and Maunaloa and Waimānalo community members celebrate Ka Iwi Coast Mauka Lands’ protection.

- Historic Preservation Groups (e.g., Historic Hawaii Foundation, Kona Historical Society)
- Schools nearby (public schools, charter schools, private schools)
- State elected officials (House of Representatives, Senate, Governor)
- County elected officials (Neighborhood Board, Councilmembers, Mayor)
- U.S. Fish & Wildlife Service, the State Department of Land and Natural Resources – rare plants/animals or aquatic resources
- National Oceanic Atmospheric Administration, National Marine Fisheries Service – coastal areas, turtles, and marine mammals (seals, whales)
- United States Department of Agriculture – U.S. Forest Service and Natural Resources Conservation Service – forests and agricultural and ranching lands
- Local Farm Bureau or Farmers’ or Ranchers’ Associations (e.g., Hawai’i Farm Bureau, Hawai’i Cattlemen’s Association)

PUBLIC BENEFITS

Public funding programs often require that the land conserved provide public benefits. What kind of public benefits should the new conservation landowner/takeout be expected to provide? Sometimes the public benefits of land conservation are not obvious or immediately tangible and need to be explained thoroughly – e.g., purchasing this forest will allow the takeout entity to manage it, restore native species, remove invasive species, and increase re-charge into freshwater aquifers relied upon for public drinking water. Some public funding programs (e.g., the City and County of Honolulu) require more affirmative/visible public benefits such as public access. If not open public access, is managed public access possible? If managed public access is not possible, are guided or supervised hikes x times a year possible? Educational programming for schools/keiki? These issues and questions often arise when negotiating a publicly funded conservation easement. For example, a County may be providing funds for the conservation easement, and will want to assure itself that there is visible public benefit to providing public funding for the easement.

RESTRICTIONS – DEED/CONSERVATION EASEMENT

Each public funding program will have its own requirements/restrictions that must appear in the deed or conservation easement. Some terms are non-negotiable – for example, the requirement that the new conservation landowner comply with all applicable laws. Other terms are negotiable. Common restrictions include no future subdivision, no future change in zoning that increases density/development potential (down-zoning or reducing the allowable density may allowed; e.g., downzoning residential property to preservation), no building of residential housing (or strict limits on residential housing – e.g., a caretaker or security structure), and limits on impervious surfaces (roads, roofs, concrete pads, etc.).

It is therefore very important for the new conservation landowner to know what its future plans are for the land – if the organization believes that an educational hall, interpretive center, certified kitchen, or structure might be needed in the future, it needs to reserve the right to build that in the conservation easement or deed. Some conservation easements may require the landowner to perform affirmative obligations – e.g., hold a certain number of public access days per year – but usually these types of affirmative obligations are negotiable. The new conservation landowner needs to be very sure that it will be capable of carrying out these affirmative obligations in perpetuity, and should be very careful in agreeing to them.

The types of restrictions in the deed or conservation easement will depend on the goals of the public funding program. For some public funding programs, public access may be important. For the U.S.D.A. Agricultural Conservation Easement Program, it is important that the agricultural productivity of the land is preserved and that impervious surfaces (e.g., paved roads, concrete foundations) that reduce agricultural productivity be prohibited or severely limited. U.S. Fish & Wildlife programs focus on maintaining habitat for endangered and threatened species. The U.S. Forest Legacy program focuses on maintaining and supporting a thriving forest.



Hāwea Heiau and Keawāwa Wetlands

HAHA'ONE, MAUNALUA, O'AHU

“The most inspirational moment was when the landowner shared back their understanding of the cultural and natural resources of their land and desire to support our preservation mission. The most emotional moment was when I was able to share that good news with our beloved niu grove as it was the niu that originally called to me.”

—Elizabeth Reilly, President, Livable Hawai'i Kai Hui



Keiki explore the newly protected Hāwea Heiau and Keawāwa Wetland.

SQUARE FEET/ACRES: 5 acres

PURCHASE PRICE: \$650,000

FUNDING SOURCES:

- \$325,000 – State Legacy Land Conservation Program
- \$325,000 – City and County of Honolulu Clean Water & Natural Lands Program

COMMUNITY OWNER: Livable Hawai'i Kai Hui

PARTNER: The Trust for Public Land

CONSERVATION EASEMENT HOLDER: City and County of Honolulu

NOTES: Livable Hawai'i Kai Hui hosts volunteer work days and 'āina based educational programs.

Sources of Land Conservation Acquisition Funding

FEDERAL

Many federal programs fund land conservation acquisitions and conservation easements. Every program has different requirements. Federal programs fund conservation of land for wildlife habitat, hunting areas, migratory bird habitat, wetlands, forests, coastal and estuarine areas, agricultural and ranch land, and buffer areas around military training installations. Many federal programs are funded by the Land and Water Conservation Fund (LWCF) – a fund of up to \$900 million per year from off-shore oil lease revenues (not a tax). Each year, Congress historically appropriated much less than the \$900 million for different programs that draw upon the LWCF. Decades of efforts by land trusts and other organizations recently resulted in the passage of the Great American Outdoors Act, which the President signed into law on August 4, 2020, securing permanent and full-funding of LWCF for land conservation and maintenance of federal public lands. This is encouraging news for federally funded land conservation programs, and national park and refuge expansions in Hawai'i. Hawai'i has competed very well for federal land conservation funding because our unique natural and cultural resources, and sadly, high number of endangered and threatened species. A sampling of some of the more commonly used federal programs in Hawai'i are included in Appendix E.

STATE

STATE LEGACY LAND CONSERVATION PROGRAM: Thanks to a coalition of conservation and affordable housing groups, the State Legislature established the Legacy Land Conservation Program (LLCP) in 2005, setting aside up to ten percent or \$5.1 million (whichever is lower)⁶ for land conservation funding under Hawai'i Revised Statutes Chapter 173A, and Hawai'i Administrative Rules Chapter 13-140. The LLCP is housed within the Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW), and consists of one full-time administrative staff person as well as the Legacy Land Conservation Commission (the "Commission"). The Commission is composed of nine volunteer experts from different islands, appointed by the Governor and confirmed by the Senate. The Commission reviews funding applications, conducts site visits, consults with the Legislature's leadership, and makes funding recommendations to the State Board of



Keoni Fox of Ala Kahakai Trail Association shares with his Ka‘ū community at a farmers market about coastal land protection efforts.

Land and Natural Resources (BLNR), the governing entity of DLNR. The timing of the annual LLC application process has changed over time, and it is best to check the program’s website below.

The application is not for the faint-hearted, requiring detailed information about the property, preliminary title reports, value, and budgets. Pre-application consultation forms must be submitted to three state agencies prior to the formal application. After the Commission reviews applications, consults with the Senate President and Speaker of the House, and makes funding recommendations to BLNR, BLNR approves (or disapproves or amends) the recommendations. After BLNR approval, the Governor must release the funds, and then the LLC and grantees (the applicants) enter into a grant agreements. The State LLC will deposit funds directly into the escrow established for the transaction after the grantee fulfills an exhaustive closing checklist of documentation required by the program. The LLC currently requires a 25% match for non-profit applicants.

<https://dlnr.hawaii.gov/ecosystems/llcp/statutes-rules/>

CAPITAL IMPROVEMENT PROJECTS OR LEGACY EARMARKS. The Legislature also has the authority to appropriate funds for specific conservation projects through the general fund in capital improvement projects (financed by general funds or general obligation bonds) or by earmarking funds directly out of the LLC fund, bypassing the Commission vetting process. For example, The State of Hawai‘i Department of Land and Natural Resources (DLNR) purchased Lipoa Point on Maui with State general obligation funds (borrowed funds based on the state’s credit and authority to tax). The State Agribusiness Development Corporation purchased over 1,500 acres of the Galbraith Estate in Central O‘ahu outside of Wahiawā with general obligation bond funds (in addition to other federal and county funds facilitated by The Trust for Public Land). The Legislature earmarked LLC funds for State DLNR’s acquisition of Kamehamenui on Maui and Waimea Native Forest on O‘ahu’s North Shore.

COUNTIES

Thanks to the advocacy of land trusts and local communities, Hawai‘i has the distinction of establishing public funding sources for land conservation at every county level in the State (only one other state has established state and county funding sources at every level). Residents love and see the value of conserving ‘āina. Each county has set aside varying percentages of its real property taxes in their County Charters (the County equivalent of a constitution), which makes those funds difficult to raid for other purposes because a charter amendment allowing use of the funds for other purposes would have to be voted on during an election year. Unspent balances rollover into successive years and collect in each fund. Each county’s process for accessing those funds varies, and we recommend you consult with a land trust to learn about the intricacies of each individual process.

THE CITY AND COUNTY OF HONOLULU (O‘AHU) sets aside half-a-percent (0.5%) of real property taxes for the **CLEAN WATER AND NATURAL LANDS PROGRAM** set forth in the Revised Charter of Honolulu.⁷ Depending upon annual real property tax revenues, the amount that goes into the fund is roughly \$6+ million annually. A volunteer Commission of seven experts appointed by the Mayor and Council Chair, confirmed by the Council, accepts applications (similar in detail to the State Legacy application) on a rolling basis, holds monthly hearings, and recommends projects for funding to the City Council. The process for approval and ultimate funding has varied over the years, so it is best to consult with a land trust regarding the specifics. The program has required that, if the City and County of Honolulu is not acquiring the land, the City co-hold a conservation easement over the land with an Administrative Co-Holder – typically, a land trust like Hawaiian Islands Land Trust or North Shore Community Land Trust. The Administrative Co-Holder does all the heavy lifting of monitoring, reporting, and enforcing the conservation easement, reducing the burden on City staff. This means that if a non-City entity is acquiring the land, like a non-profit, the CWNL’s contribution is limited to the value of the conservation easement.

More info at: <http://www.honolulu.gov/cwnl.html>

MAUI COUNTY sets aside one percent (1%) of real property taxes for its **OPEN SPACE, NATURAL RESOURCES, CULTURAL RESOURCES, AND SCENIC VIEWS PRESERVATION FUND** under the Charter of the County of Maui.⁸ Depending on real property tax revenues, the amount that goes into the fund annually is roughly \$6+ million a year. There is no application process or Commission that oversees this fund. The Mayor or a Councilmember must ensure that specific project funding is included in the annual budget or a stand-alone bill. Like Honolulu, Maui County requires that a Maui County agency acquire the land, or that Maui County acquire a conservation easement over the land. In the past, Maui County has not required an Administrative Co-Holder. This means that if a non-County entity acquires the land, Maui County’s contribution is limited to the value of the conservation easement. The fund can also be used for safety and security improvements on land acquired with the fund. There is no website link available regarding the program.

THE COUNTY OF HAWAI‘I sets aside two percent (2%) of its real property taxes for its **PUBLIC ACCESS, OPEN SPACE, AND NATURAL RESOURCES PRESERVATION FUND** (also known as the PONC fund) under its County Charter.⁹ Depending on real property tax revenues, the amount that goes into the fund annually is roughly \$4 million a year. A volunteer Commission of 9 members from the different council districts, appointed by the Mayor and confirmed by the County Council, accepts project nominations, conducts site visits, holds hearings, and ranks projects for funding priorities annually. The County Council must pass a specific resolution to appropriate funding to a project. If the County is not acquiring the land, then it must acquire a conservation easement over the land. The County of Hawai‘i has not required an Administrative Co-Holder. This means that if a non-County entity acquires the land, the County’s contribution is limited to the value of the conservation easement. A separate quarter percent (0.25%) maintenance and preservation exists to fund management and stewardship activities on lands acquired with the PONC fund.

More info at: <https://www.hawaiicounty.gov/departments/finance/property-management>

KAUA‘I COUNTY sets aside half-a-percent (0.5%) of real property taxes for its **PUBLIC ACCESS, OPEN SPACE AND NATURAL RESOURCES PRESERVATION FUND** under its County Charter.¹⁰ Depending upon real property tax revenues, the amount that goes into the fund annually is roughly \$700,000 per year. A volunteer Commission of 9 members appointed by the Mayor and Council representing different geographic districts solicits public input and makes recommendations to the Council regarding priority acquisitions. The County Council

must then appropriate funds for specific projects by passing a bill or including it in the budget. Although the County has not acquired any conservation easements using this fund, it has indicated that it is open to the concept. Monies from the fund can also be used to improve pedestrian coastal access.

More info at: <https://www.kauai.gov/OpenSpace>

PRIVATE

Private foundations and individuals also support voluntary land conservation. Individual land trusts will know of the major funders in Hawai'i, some of which are committed to preserving certain geographies or islands, or are focused on agricultural/ranching land preservation.

CAPITAL ACQUISITION FUNDING

Community members often think that they can easily raise land acquisition funding – capital funding – by crowdsourcing the fundraising on sites like GoFundMe. However, raising capital funding in the hundreds of thousands of dollars is much more complicated. We strongly recommend that community partners work closely with a land trust that has full-time philanthropy staff who can share best practices for running a capital campaign, and who can assist in infrastructure (e.g., websites, gift processing, etc.). Every gift – no matter how small – needs to be accounted, acknowledged, and processed correctly, requiring considerable administrative resources. To set yourself up for success, there are best practices for capital campaigns that should be followed – e.g., publicly announcing the campaign when you have received commitments for 60% of your goal; including the costs of the campaign (mahalo ad, event costs, website hosting, administrative costs) and some operating or future management costs in the campaign goal; and keeping track of donors and levels of gifts. For any large sum of money, professional strategy and advice is key. In addition, land trusts are familiar with privately funded programs and time lines for capital funding. For example, The Trust for Public Land was able to successfully apply for land acquisition funding from Walmart's Acres for America Program under the National Fish & Wildlife Foundation for the Waimea Native Forest on O'ahu's North Shore recently acquired by the State of Hawai'i.

PROJECT RELATED INVESTMENT/LOW OR ZERO INTEREST LOANS

A few private foundations will provide reimbursable grants or zero or low interest loans (also called project related investments) in order to purchase land that is immediately threatened with sale to a non-conservation buyer. Project related investments are very rare. They generally require the participation of a major national or international land trust which have the experience and resources to: (a) accept the risk of holding/owning the land and paying interest on the loan and all carrying costs associated with the land (e.g., real property taxes, insurance, management), (b) sort through the burdensome legal and administrative requirements to document the project related investment, the land purchase, and the land sale to the ultimate takeout entity. Usually, the interim land trust owner will own the land until public sources of funding can be lined up to convey the land to the ultimate take-out entity – a public agency or another non-profit organization. As discussed previously, in Hawai'i, the only land trusts to serve as an interim owner of land in such cases have been The Nature Conservancy and The Trust for Public Land. Larger land trusts may also have access to internal lines of credit or “action funds” — sources of capital funding that the land trust can tap if there is a way to pay interest costs during the interim period of ownership. However, access to these sources of funding is usually highly competitive within each organization.

MA'O Organic Farms

LUALUALEI, O'AHU

“All ‘āina is special. The Takahashi farm, like many farming enterprises in Lualualei, was run-down and dilapidated after years of underinvestment. What we know, understand and teach at MA'O is that our own health and well-being is inextricably tied to the health and well-being of our ‘āina. MA'O had a vision, we had a plan and we were willing to put in the sweat equity required for the ‘āina to recoup and be productive. As difficult and as challenging as it is, all of our communities need to step into the roles of actively stewarding their natural resources in order to maintain its vitality and resilience. Our work is not only about today, our work is genealogical and future oriented simultaneously. MA'O stands as a connection to both of those piko and allows our kuleana (responsibility and privilege) to manifest in real-time. As future ancestors, we hold ourselves to the expectations of our kupuna, like the Takahashis, whose hopes and aspirations continue to live through the kuleana given to MA'O.”

— Kukui Maunakea-Forth, Founder & Executive Director, MA'O Organic Farms



MA'O has expanded its footprint from its original leased 5 acres in four separate projects: (1) Takahashi Farm expansion 11 acres, (2) 7.5 acre expansion adjacent to Takahashi farm, (3) 21 acre Palikea expansion dedicated to organic agriculture in perpetuity via a conservation easement held by HILT, and (4) 236 acre Palikea expansion. The expansion efforts were financed through a combination of public and private funds. MA'O is now one of the largest certified organic farms in the State. The initial Takahashi Farm expansion is detailed below:

SQUARE FEET/ACRES: 11 acres

PURCHASE PRICE: \$987,300

FUNDING SOURCES:

- \$737,300 – State Legacy Land Conservation Program
- \$250,000 – Private donations

COMMUNITY OWNER: Waianae Community Re-Development Corporation (WCRC) (MA'O Organic Farms is a social enterprise created under WCRC)

PARTNER: The Trust for Public Land

NOTES: MA'O grows over 40 different varieties of organic fruits and vegetables. The farm enterprise is co-managed by youth interns and apprentices who shoulder the hana nui of feeding community while receiving training and mentorship to become entrepreneurial community leaders.

Sources of Stewardship/ Management Funding

The previous section covered funding opportunities for land conservation acquisitions of land or conservation easements. However, acquisition is only part of the story. Once the land is acquired (and preferably before it is acquired), the owner must be able to raise sufficient funding for continued stewardship and management.

FEDERAL

There are sources of federal stewardship funding for different purposes – for example, endangered species protection and recovery, native forest recovery, wetland restoration, dune restoration, migratory bird habitat restoration, soil conservation on agricultural and ranch land, and educational programs. In many cases, the programs may provide resources for management planning and on-the-ground restoration activities. Your land trust partner will have information on grant programs that may apply to your project. Typically, these grants require some sort of non-federal or private matching funds. The federal agencies most commonly tapped for stewardship support in Hawai'i include the U.S. Department of Agriculture Natural Resource Conservation Service (e.g., wetlands, pasture lands, soil erosion management), the U.S Fish & Wildlife Service (endangered species, habitat), the National Oceanic Atmospheric Administration (coastal ecosystems), and the United States Department of Agriculture U.S. Forest Service (forests). The federal grants.gov website is also a good resource to investigate the myriad of grant programs available.

STATE

The State Legacy Land Conservation Program is allowed to use up to five percent of the amount that goes into the fund in the previous year for costs related to the “operation, maintenance, and management” of lands acquired through the program. Currently, this aspect of the program is relatively untested. In addition, the State Department of Land and Natural Resources, Division of Forestry and Wildlife administers a number of landowner assistance programs. For example, the Forest Stewardship Program provides technical and financial assistance to landowners of non-industrial forested land, and promotes the stewardship, enhancement,

conservation and restoration of Hawai'i's forests. The Kaulunani Program improves the health and viability of trees through educational programs and financial support/cost sharing grants, technical training, and public-private partnerships.

More info at: <https://dlnr.hawaii.gov/forestry/lap/>. The Legislature also administers a Grants-In-Aid program for non-profit organizations.

COUNTY

As discussed above in page 32, the Hawai'i County PONC fund allows for up to a quarter percent of real property taxes for funding the management and stewardship of lands acquired with the fund. The Maui Open Space Fund can be used for safety and security improvements on land acquired with the fund. The Kaua'i Open Space Fund can be used to improve pedestrian coastal access. Some counties also have Grant-In-Aid programs for non-profits.

PRIVATE

A number of private foundations nationally and in Hawai'i support stewardship of land. Your land trust partner should be familiar with these foundations. For example, the National Fish and Wildlife Foundation (NFWF) administers a number of programs focused on Hawai'i native forest birds and native forest watersheds.

For more info: <https://www.nfwf.org/>

The Hawai'i Community Foundation also has an Environmental Funders Group that supports conservation and stewardship of land in Hawai'i. Many of the major kama'āina foundations and large corporate foundations have a history of funding environmental stewardship and education.

For more info: <https://www.hawaiicommunityfoundation.org/strengthening/creating-environmental-partnerships>

Working with Land Trust Partners to Conserve Land

MEMORANDUM OF UNDERSTANDING

As discussed above, as a best practice, community organizations/partners and the land trust should consider developing a memorandum of agreement that memorializes the roles/responsibilities between the land trust and community groups, lines of communication, fundraising responsibilities, and media communications. A sample is attached as Appendix B.

PUTTING THE LAND UNDER CONTRACT

The Trust for Public Land and other organizations have written comprehensive guides on land transactions such as *Doing Deals: A Guide to Buying Land for Conservation* (out of print, but available on Amazon) and *The Conservation Easement Handbook* (available on the Land Trust Alliance lta.org website). We recommend reading those books if you are interested in a more detailed explanation of the ins-and-outs of conservation transactions. The Land Trust Alliance also has a wealth of information and publications available on line on specific topics in land conservation. The land trust, regardless of whether the ultimate take-out partner is a community organization or public agency, usually is the party to put the land under contract because public agencies are usually not able to commit/contract in a timely fashion and land trusts have experience in land conservation transactions. Sometimes, the land trust may negotiate an intermediate non-binding letter of intent as an intermediate step in a complex transaction. Or, the land trust and landowner may immediately negotiate and execute an option agreement or a purchase and sale agreement. The difference between an option agreement and a purchase and sale agreement is largely one of semantics and perception. An option agreement usually puts the property under contract for a longer period of time as the buyer/land trust conducts “due diligence” (described below). A purchase and sale agreement is perceived as a firmer commitment to buy/sell. However, both agreements can be crafted in ways that makes an option agreement a very strong commitment to buy/sell, and a purchase agreement a conditional purchase.

DUE DILIGENCE

Prior to purchasing the land or conservation easement, the land trust will conduct “due diligence,” an investigation of the land and its suitability for purchase for conservation. A non-exhaustive list of the most common “due diligence” items follows.

ZONING/LAND USE DISTRICT

In Hawai‘i, land use is governed by state land use districts and county zoning. The ultimate takeout entity that will own and manage the land should be aware of the state land use district (conservation, agriculture, urban, country), the county zoning, and the permitted and conditional uses allowed on the land. For example, a community group might want to acquire an ancient fishpond or spring in a residential area for educational purposes. However, educational programs/school visits may not be permitted uses under residential zoning and the future owner of the land should be aware that it will need to obtain a conditional use permit to conduct educational visits in a lawful manner. The state land use district and county zoning will also influence the appraised value the land. Basic information about the state land use district and county zoning is available on the county websites in page 16, above.

TITLE

The concept of “title” in land transactions refers to “ownership” under Western principles of property law. When people say they have “good title” or “clean title” to the land, they mean they own the land – free and clear of any ownership claims from third-parties, or encumbrances (e.g., road easements) that would prohibit or limit use of the land. In a conservation transaction, the landowner/seller usually orders a preliminary title report from a licensed title company and provides it to prospective buyers. Title insurance will insure the buyer/future landowner from claims against the property (e.g., unrecorded/unknown encroachments or claims). The preliminary title report will list “exceptions to title,” items that are not insured by the title insurance company. Typical and non-worrisome exceptions to title are utility easements for water and electricity. In Hawai‘i, traditional and customary rights of Native Hawaiians for subsistence and cultural practices guaranteed under Hawai‘i’s Constitution, and the State of Hawai‘i’s right to underground minerals are standard title exceptions. Examples of worrisome exceptions to title include liens filed against the property, encroachments by neighboring landowners, and claims of ownership by other people. The buyer/land trust should review all of the exceptions to title with the ultimate takeout entity to determine if they are acceptable.

- Is there legal vehicular access to the land?
- Are there unrecorded or recorded easements on the land that could affect the use of the land for its intended conservation purpose?
- Are others asserting claims of ownership over the land?
- Does the seller have good/clear title to the land?

These title issues are investigated and resolved during the due diligence period.

VALUE/APPRaisal (INCLUDING NEED FOR REVIEW APPRAISAL) (DISCUSSED IN PAGE 20, ABOVE)

PAST ENVIRONMENTAL CONTAMINATION

At minimum, buyers should retain a licensed environmental consultant to complete an Environmental Phase I Site Assessment of the property.¹¹ This is not to be confused with environmental impact statements and environmental assessments associated with publicly funded projects or projects that require major governmental approvals or permits. The Environmental Phase I Site Assessment of the property includes a visual site inspection and review of historical public records to determine whether there are any “recognized environmental concerns” on the property — red flags that may indicate hazardous substance contamination on the property that requires further investigation. For example, there may be a record of an underground storage tank for fuel on the property that was never removed or properly closed, there may be old vehicles or junk dumped on the property that have contaminated soil. If a prospective buyer does not complete such a report, the buyer may be liable for cleaning up undiscovered historical contamination on the property (even if the buyer had nothing to do with the contamination). By completing this report, the buyer qualifies for “innocent purchaser” defenses under federal and state laws governing contaminated properties, which means they can avoid liability for the cleanup. If further investigation or testing is warranted (there are “recognized environmental concerns” identified in the Phase I Environmental Assessment), the costs of this further investigation and clean up are issues for negotiation between buyer and seller and can often delay the timeline for closing.

ARCHAEOLOGICAL/BIOLOGICAL/GEOLOGICAL SURVEYS

As part of the option or purchase agreement, the landowner usually has an obligation to provide the buyer/land trust with all past information in the landowners’ possession/control about the property, including past archeological, biological, or geological surveys which can be sources of useful information to the conservation buyer. The State Office of Environmental Quality Control (OEQC) website also has an online database of past environmental assessments and environmental impact statements for development projects. For more info: <https://health.hawaii.gov/oeqc/>. Archeological inventory surveys are usually very expensive – so if the seller has not already completed one, it is not usually feasible to complete one to support the conservation purchase. The community and land trust partners may need to be creative by researching existing sources, interviewing kupuna, researching old newspaper articles or Hawaiian language sources, and inviting scholars/archeologists to the property to get more informal opinions of the cultural resources on the land.

BOUNDARY SURVEY

In some cases, the landowner may have boundary survey of the land that it can share with the land trust and community. In other cases, a recent survey may not be available. If a survey has not been completed in the recent past (this often happens with old plantation land), it is often worth the expense to have a modern survey completed, as the difference in acreage can be significant, and boundaries may not be clearly understood. The cost of the survey is a point of negotiation between buyer and seller. There are also various levels of surveys, with the most detailed being an ALTA (American Land Title Association Survey), which is a detailed survey of all improvements, easements, rights-of-way and other elements that impact ownership and use of the property, which is required for extended title insurance policies. Depending on the size and complexity of the property, surveys can be very expensive. Typically, sellers bear the cost of survey.

COMMUNITY/NEIGHBORS

For conservation transactions, a critical part of due-diligence includes the surrounding community and neighbors.

- Is there strong community support for conserving the property?
- Are adjacent landowners and neighbors supportive of the conservation of the land and future conservation stewardship and management of the land?
- If the future owner is a public agency, can the community work with that public agency on community stewardship of the land?

Many communities are distrustful of public agencies' ability to manage public lands, and unless there is solid vision and plan for management, there may be community opposition to conservation because of concerns about neighborhood traffic, over-use of the land by visitors and residents, vandalism, and houseless persons. Early community engagement and outreach to neighbors can flesh out these issues, and allow time for partnerships or other collaborations to arise to address these issues.

FUNDRAISING (ACQUISITION & STEWARDSHIP)

(DISCUSSED ABOVE)

BASELINE MONITORING REPORT/ RESOURCE VALUE DOCUMENTATION

Before undertaking any conservation project, whether a fee simple acquisition or conservation easement, land trust staff should have a very clear idea of the conservation values that prompt the land trust's involvement, and those values should be codified and explicitly stated in the conservation easement, if applicable. Community members' knowledge and expertise are essential in identifying all conservation values and understanding the land's ecological, cultural, and historical function within the broader ahupua'a or landscape. Projects involving conservation easements require the land trust holding/owning the conservation easement to complete a baseline documentation report prior to closing. The report includes maps, surveys, photos, and GIS points documenting the resources and conditions of the land. Accredited land trusts must follow Land Trust Alliance reporting requirements in creating this baseline documentation report. Land Trust Alliance standards specify that the site visit for the baseline documentation report should take place within 6 months of closing, but in practice, many land trusts prefer to conduct the site visit two or three months prior to closing to ensure that there are no dramatic changes to the condition of the protected lands before closing. Land trusts usually require stewardship and legal endowments when they accept conservation easements – cash gifts made to the land trust that are deposited into conservative income bearing accounts/funds that produce income sufficient to pay for the expenses and staff time to return to the land every year to conduct annual monitoring of the landowner's compliance with the terms of the conservation easement, complete an annual report, and if necessary, take legal action to enforce the terms of the conservation easement.

CLOSING

Again, the purpose of this guide is not to delve into the details of transactions – other books and publications are more suited to this purpose. In general, community groups should know that, as closing approaches, key individuals in the group must be available and flexible. If a community group is the ultimate takeout entity, the organization must pass a resolution in accordance with its by-laws authorizing the transaction and a person or persons to sign conveyance documents on behalf of the organization. Those persons must be available in the weeks before closing to sign appropriate documents, often in front of a notary. If the community non-profit is the “grantee” receiving public funds from an agency, state tax clearances, certificates of good standing for the non-profit, and/or vendor compliance certificates will be required. Pre-closing is usually a flurry of activity that can seem overwhelming – just understand that this is par for the course and be prepared for unexpected details or pre-closing requirements.

POST-CLOSING

MEDIA/POST-CLOSING MAHALO CELEBRATION

Prior to closing, the partners in the transaction should, if appropriate, draft a press release or announcement celebrating the closing of the transaction. If a public agency is acquiring the land, a press conference or other formal announcement involving elected officials may occur. The partners should work collaboratively on the press release well in advance of the projected closings, and obtain quotations or statements from key officials who have contributed to the effort.

Another opportunity to acknowledge all the partners in the conservation of the land, and build community support for future stewardship, is a post-closing blessing or mahalo celebration. This does not have to be a fancy event – it can be held on the land or at a local school cafeteria and include optional site visits or hikes of the land and light refreshments. A blessing can occur as part of the ceremony, or privately in a more intimate setting. It is a wonderful time to thank everyone involved – including the landowner, funders, and community supporters, and also build support for future stewardship of the land. Where there has been desecration of the land, or where conflicting land uses have divided a community, a land blessing can begin a healing process for both the land and the community, including the former private landowner.

SIGNAGE

If a community organization is the ultimate take out entity/owner, the memorandum of understanding between the land trust and community organization will likely cover the issue of signage. Some funding programs like NOAA’s Coastal Estuarine Land Conservation Program require signage as a deliverable. This again, is an opportunity to recognize partners in the conservation of the land and share educational information about the land. The Hawaii Tourism Authority funds educational signage on land that visitors may frequent. Often, the land trust partner may fund signage as an investment in name-recognition and branding. We recommended commissioning three or more copies of each sign as sadly, signs can be defaced or destroyed by irresponsible members of the public.

LAND MANAGEMENT/CONSERVATION EASEMENT MONITORING & ENFORCEMENT

Proper stewardship of both fee-owned lands and conservation easements remains an enduring responsibility of the new landowner and conservation easement holder in perpetuity. Failure to properly steward protected lands not only hurts the conservation resources and community, but also reflects poorly on the landowner/steward, and has the potential to erode public trust in the voluntary conservation process. Typically, the burden of land management on land with conservation easements remains with the landowner, although occasionally certain management activities may remain with the land trust. On fee owned lands, the entire responsibility of all stewardship activities lies with the land trust or non-profit organization that takes ownership. Community groups or organizations considering acquiring either an easement or land in fee should carefully examine their capacity to undertake perpetual stewardship and management responsibilities.

Land Trust Alliance standards and practices require land trust holding a conservation easement to visit the conserved property at least one time each year. This involves several necessary steps, including notifying the landowner of the upcoming visit, a review of the conservation easement, the baseline documentation report, and any management plan prior to the visit. After the site visit, the land trust drafts a report on the condition of the easement, with particular emphasis on whether the property conforms to the terms of the easement. Finally, the land trust keeps the annual conservation easement monitoring reports in a safe location (e.g., fire-proof safe) and backs up the files regularly if the document is maintained electronically (e.g., maintains alternate electronic files in an off-site location such as the cloud).

CONTINUED CAPACITY-BUILDING/SUSTAINABILITY

If the non-profit community organization will be the future owner of the conserved land, it should think about building its capacity well before it owns the land. What are the resources on the land that the organization will need to manage (biological, cultural, agricultural)? Are there other partner organizations or agencies, community members, or experts that can help with outreach, visioning, management planning, on-the-ground restoration or stewardship work, educational programming, and fundraising? What kind of expertise might be needed on the board of directors – legal, land, resource management, fundraising? Does the organization have the infrastructure to fundraise (data base of donors/supporters, administrative/accounting infrastructure) or can it build that capacity? Does the organization have the capacity to file and maintain all the paperwork necessary to maintain its non-profit and tax exempt status? How can the organization build its membership and supporters?

Ideally, the organizations needs to plan, budget, and fundraise well in advance of closing for the expenses and administrative burden of owning land. The organization will need to seek real property tax exemptions or tax breaks available for land dedicated to conservation or agricultural purposes. Information about relevant real property tax-exemptions or reduction programs is attached as Appendix D. The organization will also need to obtain comprehensive general liability insurance for the activities that take place on the land.

CONTINUED OUTREACH TO NEW NEIGHBORS AND COMMUNITY

If a non-profit community organization is the takeout entity that owns and manages the land, that community organization should consider methods of communication to let neighbors and the community know what is going on at the land, invite broader participation in stewardship activities, and give people opportunities to support the organization financially. Paper and email newsletters, a social media account (Facebook, Twitter, Instagram), open houses or stewardship days on the land, are excellent ways to engage surrounding communities and raise financial support for stewardship. Communication to the broader community is key to building financial and volunteer support for your ownership and stewardship of the land. You may consider quarterly or every other month reports to the neighborhood board or community association. Keeping an updated data-base of community members, supporters, and elected and agency officials is key to communicating your message.

Kānewai Spring

KULI'OU'OU, O'AHU

“More special places in Hawai‘i need to be protected and it is our (community) kuleana to ensure this happens. The protection of these places are vital to our environmental and cultural wellbeing. It takes a deep commitment and a lot of work - but it is well worth knowing you have contributed to the wellbeing of our ‘āina and the wellbeing of future generations. Always look to ke Akua and our kūpuna as the source of strength and guidance and one day at a time you will holomua and succeed!”

—Angela Correa-Pei, Vice-President, Maunalua Fishpond Heritage Center



Chris Cramer sharing the cultural and natural resources of Kānewai Spring with keiki.

SQUARE FEET/ACRES: 33,594 square feet

PURCHASE PRICE: \$2.3 million

FUNDING SOURCES:

- \$1 million – State Legacy Land Conservation Program
- \$1.3 million – City and County of Honolulu Clean Water & Natural Lands Program

COMMUNITY OWNER: Maunalua Fishpond Heritage Center

PARTNER: The Trust for Public Land

CONSERVATION EASEMENT CO-HOLDERS: City and County of Honolulu & Livable Hawai‘i Kai Hui

NOTES: The Trust for Public Land and Maunalua Fishpond Heritage Center ran a joint campaign to raise funds for stewardship and project acquisition costs. The Maunalua Fishpond Heritage Center hosts regular ‘āina based educational visits and volunteer work-days.

Conclusion

The tortured history of land in Hawai‘i can be overwhelming and difficult to address. Our collective history is full of stories of disconnection and despair that we often feel helpless to surmount. However, the very act and process of conserving land can bring communities together in surprising and inspiring ways, reconnecting people to the land and each other, building relationships, and growing community resilience. Land conservation can begin a healing process – for the land, for divided communities and families, and for our future generations. We hope this guide can start that healing process for many communities throughout the State of Hawai‘i and for the many special places that are the heart and soul of Hawai‘i. E ola!

“When you answer the kāhea to protect ‘āina, you embark on a journey of personal growth and discovery. In my experience, most of the heavy lifting is being done on a spiritual plane but the ancestors need us to do the legwork. At times, it can feel overwhelming but once you find humility, you are free to seek the guidance of those who came before and those who will follow. Soon, you find yourself intimately connected to every living creature on that ‘āina as well as the earth, the rocks, the wind and sea.”

—Keoni Fox, Ala Kahakai Trail Association, Member of Board of Directors

LAND CONSERVATION TRUISMS

(BOILING DOWN OVER 20 COMBINED YEARS OF EXPERIENCE)

SO I WANT TO SAVE SOME LAND

1. **THERE IS NO FREE LUNCH** – While there are county, state, federal and privately funded programs that grant funding for land conservation, all the programs come with restrictions that the organization or agency that will own the land will have to live with in perpetuity. If the future owner/steward of the land can't live with the restrictions of the funding programs, don't bother.
2. **NO GOOD DEED GOES UNPUNISHED** – Hey, I'm saving the 'āina – shouldn't it be unicorns and rainbows? NOPE – we promise, someone 'goin be hating on you. Don't be surprised when it happens and don't be discouraged. Do your best to address legitimate concerns with respect and humility, but don't expect folks to throw you a parade. Expect heated emotions — both positive and negative, lots of characters worthy of a Lee Cataluna play, and don't be surprised if your project brings to the surface 1,000 years of Hawai'i's tortured history regarding land.
3. **DO OTHER PEOPLE'S JOBS IF NEEDED, BUT DON'T TAKE CREDIT** – Sometimes, partners need help. To get things done, you may feel like you are doing someone else's job. Do it anyway if the work needs to be done, and then don't take credit. In fact, thank them for letting you do it – the needed work got done and you are that much closer to getting the land conserved!
4. **IT WILL TAKE THREE TIMES LONGER THAN YOU EXPECT** – Yup, Hawai'i time **ON STERIODS**. You gotta be patient but persistent, especially when working with multiple public funding sources. Developers complain all the time about how long it takes to get permits to build things. HA!!! Try conserving some land!
5. **EVERY PROJECT DIES AT LEAST THREE DEATHS** – No, not the name of the new James Bond film. The appraisal may come out too low, the landowner may walk away, the grant money may be expiring, but all is not lost. Remain positive and persistent and problem solve. Keep reaching out to the landowner periodically – things may change.
6. **IT TAKES A THOUSAND CUPS OF COFFEE** – Or 'awa, tea, beer, shots of whiskey – your drink of choice. But you will need to talk story with the landowner, community, commissioners, elected officials, and many, many others. Get your bladder/liver ready!
7. **OWNERSHIP IS JUST THE BEGINNING** – Buying the land is just the start of a long-term process of working with community members and volunteers to steward and mālama the land.

APPENDIX A

LIST OF LAND TRUSTS AND CONTACT INFO

THE NATURE CONSERVANCY

(INTERNATIONAL, NATIONAL, AND STATEWIDE)

The mission of The Nature Conservancy (TNC) is to conserve the lands and waters on which life depends. TNC envisions a future where nature and people thrive, and to meet this ambitious goal TNC focuses on these key areas of conservation: protect land and water, provide food and water sustainably, tackle climate change, and connect nature and people.

Conserving critical lands remains a core strategy and TNC seeks to help Hawai'i protect its remaining native dominated landscapes before they disappear. TNC relies on science to guide it to high priority areas for acquisition. Its land protection functions include land protection transactions including fee or conservation easement acquisition, or assisting other organizations and agencies to acquire properties. In Hawai'i and at Palmyra, TNC manages 14 nature preserves totaling over 40,000 acres, and with partners, TNC has helped protect over 200,000 acres of our best watershed forests. TNC convenes, leads and supports community, academic and government partnerships that enhance and accelerate conservation. With partners, TNC brings community leaders together in peer learning networks to share best practices, leveraging the power of collective action to improve management and policy.

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THE TRUST FOR PUBLIC LAND

(NATIONAL AND STATEWIDE)

The Trust for Public Land is a national non-profit accredited land conservation organization that creates parks and conserves land for people, ensuring healthy livable communities for generations to come. Formed in 1972, it has been working in Hawai'i since 1976, when it expanded the Volcanoes National Park at Kalapana. It opened an office in Honolulu in 1998 and works statewide, guided by a Hawai'i Board that includes members from all major islands. As of 2020, The Trust for Public Land employed five full-time staff, and conserved over 54,200 acres of land in 41 projects in partnership with local communities, public agencies, elected officials, and other non-profit organizations and land trusts. The Trust for Public Land's Hawaiian Islands Program has focused its land conservation work in two areas: (1) Aloha 'Āina – protecting lands that perpetuate Hawaiian culture, and (2) Sustainable Hawai'i – protecting lands that produce our food, forests, and clean drinking water. The Trust for Public Land is also in the process of launching an urban Parks for People program in Hawai'i that reconnects underserved communities to urban parks and healthy programming for all ages, building community capacity and resiliency.

The Trust for Public Land differs from other land trusts in that it ALWAYS works in partnership with a public agency or other non-profit organization or local land trust to conserve land. Because The Trust for Public Land has very few project field staff (as of 2020, two land conservation project managers), it does not have the resources to own and steward land in the long-term. The Trust for Public Land contracts directly with landowners, and may serve as an interim buyer and holder of land until all the public and private funds can be lined up for acquisition. However, the Trust for Public Land generally conveys the land or conservation easement¹² to a public agency (e.g., National Park Service, State Division of Forestry and Wildlife, State Parks), a non-profit organization that has the capacity and willingness to steward and manage the land long-term (e.g., MA'O Organic Farms, Ka Iwi Coalition under Livable Hawai'i Kai Hui, Ka'ala Cultural Learning Center), or another land trust that holds conservation easements (e.g., North Shore Community Land Trust, Hawaiian Islands Land Trust). The Trust for Public Land is a true partnership organization. The Trust for Public Land also has a history of taking on large acreage projects with big price tags (e.g., Turtle Bay-Kahuku to Kawela Forever \$45 million, Galbraith Estate/Lands of Līhu'e \$25 million), involving multiple sources of federal, state, county and private funding

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HAWAIIAN ISLANDS LAND TRUST

(STATEWIDE)

Hawaiian Islands Land Trust (HILT) protects the lands that sustain Hawai'i, and teaches future generations to do the same. HILT is Hawai'i's islands-wide land trust that is both a Hawai'i 501(c)3 non-profit and a nationally accredited land trust. HILT's mission is to protect and steward the lands that sustain Hawai'i, and to perpetuate Hawaiian values by connecting people with 'āina. HILT's vision is "I ola ka 'āina, i ola kākou nei." Hawai'i's lands thrive and nourish its people.

To date, HILT has protected over 21,500 acres across Hawai'i through 7 public preserves owned and stewarded by HILT, 44 conservation easements protecting agricultural, ecological, and cultural resources on private lands, and 5 facilitated conservation transactions. HILT protects lands that are integral to Hawai'i's well-being and character, upholding our kuleana to these lands, and the communities they are in, through thoughtful stewardship that deepens community connection to, and builds reciprocal relationships with, 'āina. HILT works with communities on all islands to protect coastlines, Hawaiian cultural landscapes, and lands that grow food for Hawai'i's people.

www.hilt.org

126 Queen Street, Suite 306

Honolulu, Hawaii 96813

Tel: (808)791-0729

Email: info@hilt.org

Facebook: <https://www.facebook.com/HILandTrust>

Instagram: [hilandtrust](https://www.instagram.com/hilandtrust)

Twitter: [hilandtrust](https://twitter.com/hilandtrust)

MOLOKA'I LAND TRUST

The mission of the Moloka'i Land Trust (MLT) is to protect and restore the land, natural, and cultural resources of Moloka'i, and to promote, educate, and perpetuate the unique Native Hawaiian traditions and character of the island for the benefit of the future generations of all Moloka'i, particularly Native Hawaiians.

MLT ranks potential projects on a set of 20 criteria to help direct our land conservation efforts. Typically, lands with connectivity to other important or preserved areas, important cultural or natural resources, valued open space, traditional subsistence uses, and scale (size), constitute priority lands for our organization. MLT has secured 1,965 acres on two parcels through fee simple ownership, but can also utilize conservation easements to protect lands. MLT's mission requires the organization to restore the protected lands, which has led to large scale restoration efforts on our 1,769 acre Mokio Preserve on the NW coast of Molokai. MLT also partners with other conservation groups on the island to increase our effectiveness in protecting and restoring our island's natural and cultural resources.

www.molokailandtrust.org

Physical address:

1800 Farrington Avenue

Kualapuu, HI 96757

Mailing address:

P.O. Box 1884

Kaunakakai, HI 96748

Tel: (808) 553-5626

Email: molokailandtrust@gmail.com

Facebook: <https://www.facebook.com/molokailandtrust>

Instagram: [molokailandtrust](https://www.instagram.com/molokailandtrust)

NORTH SHORE COMMUNITY LAND TRUST

The mission of the North Shore Community Land Trust (NSCLT) is to protect, steward, and enhance the natural landscapes, cultural heritage, and rural character of ahupua'a (land divisions) from Kahuku (O'ahu's northernmost point) to Ka'ena (O'ahu's westernmost point).

NSCLT's priorities are identifying potential opportunities within our mission area and protecting land through conservation easements and/or transfer of land to other entities to be placed in conservation. To date, with the help of partner organizations, NSCLT has preserved over 4,000 acres of land in its mission area. These properties include preserved green space, recreational resource, coastal dune restoration, agricultural initiatives, and many culturally significant sites. NSCLT works closely with the community to define and refine a workable path forward to allow the various projects to be a true resource.

www.northshoreland.org

66-632 Kamehameha Hwy, Suite 203

Hale'iwa, Hawai'i 96712

Tel: 808 349 5881

Email: adamb@northshoreland.org

Facebook: <https://www.facebook.com/northshorecommunitylandtrust>

Instagram: [northshorecommunitylandtrust](https://www.instagram.com/northshorecommunitylandtrust)

HĀLAWA VALLEY LAND TRUST

Based on Moloka'i and focusing exclusively on Hālawā Valley, the Hālawā Valley Land Trust is not actively pursuing additional projects.

APPENDIX B

SAMPLE MEMORANDUM OF UNDERSTANDING

Memorandum of Understanding and Statement of Purpose and Practice for The Trust for Public Land and Maunaloa Fishpond Heritage Center

BACKGROUND

- Maunaloa Fishpond Heritage Center (“MFHC”) and The Trust for Public Land (“TPL”) have been working together since 2012 to purchase and protect a .75-acre property, located in Kuli‘ou‘ou, in East Honolulu on O‘ahu, that includes Kānewai Spring, an ancient niu grove, a ku‘ula stone, and an old house (the “Kānewai Spring Site”). Since that time, TPL and MFHC have raised the needed \$2,300,000 in acquisition funds, completed a due diligence review, and built and strengthened key relationships in the effort’s success.
- In 2015, MFHC and TPL collaboratively planned and launched an effort to raise \$____ from public and private sources to support the purchase and stewardship of Kānewai Spring (the “campaign”).
- As of April 18, 2017, the campaign has raised \$____ in cash or expected grant releases. Of the \$____, TPL is holding or expecting grant releases totaling \$____ and MFHC is holding or expecting grant releases totaling \$____. The parties understand that at the time of signing this Memorandum of Understanding, MFHC has not received the ____ grant funds expected, and that some of the grants received provide funds in two or more installments, such as the second \$__ installment from the ____ grant to MFHC to be released in June 2017.

PURPOSE

- TPL and MFHC intend to continue working collaboratively to complete the purchase and protection of the Kānewai Spring Site. In consultation with the community, MFHC’s vision for the future is Kānewai Spring thriving and healthy with clean freshwater and native species, continuously improving the health of Kānewai Fishpond, Paikō Lagoon and Maunaloa Bay. MFHC sees Kānewai Spring as a place where cultural traditions are honored and history is preserved through a caring community. TPL and MFHC intend for the Kānewai Spring Site to be a place for meaningful place-based education, community gathering, and perpetuation of Hawaiian cultural practices.
- This Memorandum of Understanding and Statement of Purpose and Practice (“MOU”) defines the allocation of campaign funds in various scenarios, and the roles of TPL and MFHC in the campaign.
- This MOU memorializes MFHC and TPL’s agreement on all external communications regarding the Kānewai Spring project and the campaign. MFHC and TPL realize that there are hundreds of MFHC volunteers who care deeply about preserving the Kānewai Spring Site, as well as neighbors who have expressed concern regarding this effort. This situation requires the parties to act and communicate with one another and with the public with

increased sensitivity and caution. Therefore, a primary purpose for this MOU is to reach agreement on all external communications regarding the effort, including closing the acquisition, and future stewardship progress.

GENERAL COMMUNICATION

- Credible and open communication between the partners is crucial to the success of the conservation partnership. MFHC’s Board and TPL staff ___ and ___ have met regularly and will continue to meet regularly and communicate on a regular basis to jointly plan, develop strategy, and implement the campaign. The parties have found that thus far in the campaign, they have not had success creating a separate campaign committee. However, the parties agree to work together to create a campaign working group or groups as/if needed to achieve the campaign goals.
- TPL and MFHC agree to address issues and opportunities as a team, and to share with each other information critical to the success of the project.
- TPL and MFHC agree to endeavor to communicate in a coordinated way with funding partners or potential funding partners, including the State of Hawai‘i, City and County of Honolulu, foundations and other non-profits, and will inform the other about activities or conversations with funding partners or potential funding partners related to this project. TPL will take the lead role in communicating with the State and City.
- The parties will both advise potential Kānewai Spring donors to make donations to TPL, but the parties understand that donor comfort is important, and that donations can be made to MFHC. TPL will regularly email the latest revision of the Kānewai Master Plan with donor information to MFHC’s Board of Directors. If MFHC receives a Kānewai Spring donation or grant, MFHC will timely inform ___ of TPL so that ___ can include the donation or grant in the Kānewai Master Plan. MFHC will hold all Kānewai Spring donations in a separate bank account solely used for Kānewai Spring. TPL will take the lead role in communicating with donors and foundations who donate to the effort through TPL. MFHC will take the lead role in communicating with donors and foundations who donate to the effort through MFHC. Each party will timely send a donation acknowledgment letter for tax purposes, and a thank you note for donations made out to their organization. TPL’s National Finance Division sends a brief donation acknowledgment letter for tax purposes, and TPL’s ___ sends a handwritten mahalo note. MFHC may send separate notes such as TPL, or may send a combined mahalo note and donation acknowledgment for tax purposes.
- TPL and MFHC will work together to respond to media inquiries about this project. Any inquiries by media will be shared with the other, ideally before responding to the inquiry, so that a strategy can be developed. Parties agree that if any individual of MFHC is contacted by media, that person will immediately notify ___ of MFHC, and that if any individual of TPL is contacted by media, that person will immediately notify ___ of TPL. ___ and ___ will contact one another right away to quickly develop a joint strategy.
- Both parties will uniformly recognize each party’s participation in this effort as an effort by TPL and MFHC.
- Each party will refer to the other party by its full name in external communication – “The Trust for Public Land” instead of “TPL”, and “Maunalua Fishpond Heritage Center” instead of “MFHC”.
- Each party will coordinate with the other partner on all events, meetings, and other activities that will promote the project or solicit funds.

CAMPAIGN GOALS

- The total campaign goal is \$____, allocated as outlined in the budget to be spent as follows:
 1. \$____ to TPL to support operating costs associated with the project
 2. \$____ to TPL to cover approximate online fundraising fees. The actual fees incurred will be reimbursed to TPL by the campaign.
 3. \$____ to MFHC for stewardship of the land, including property tax, liability insurance, title insurance, and future planning costs.
 4. \$____ to the future conservation easement Administrative Holder to support a conservation easement stewardship endowment. This amount may be allocated to MFHC which will then provide the funds to the non-profit conservation easement holder.
 5. \$____ to TPL to support future conservation work in Hawai'i
- The campaign goal will not change without approval by both MFHC and TPL.
- The campaign will conclude when the goal is reached unless determined otherwise by both MFHC and TPL.
- Various funding scenarios are explained in the following section.

ROLES OF EACH PARTY

TPL will:

- Connect potential individual funders to the campaign.
- Receive, receipt, hold and acknowledge all contributions for the campaign, unless donations or grants have been made directly to MFHC.
- Share prospect research for the benefit of both parties.
- Develop fundraising materials to promote the effort, with consultation from the campaign committee and MFHC.
- Lead the development and submission of public and private grant applications.
- Regularly update and share the Kānewai Spring Master Plan with MFHC, which includes the gift chart, potential donors, gifts received, gift report, campaign timeline, project timeline, budget and plan, and funding scenarios.
- Negotiate and be the communication lead with the landowner.
- Use best efforts to complete the real estate transaction, including all due diligence.

MFHC will:

- Connect potential individual funders to the campaign.
- Receive, receipt, hold and acknowledge all contributions for the campaign that are made directly to MFHC, and timely tell TPL about each donation or grant.
- Assist with other activities listed above in the TPL section.
- Mail quarterly letters to surrounding the other owners of Kānewai Fishpond (per the City funding conditions)
- Give a presentation to the Kuliouou-Kalaniiki Neighborhood Board annually after giving written notice of the presentation to the other owners of Kānewai Fishpond (per the City funding conditions)
- After acquisition, develop a five-year work plan.
- Revise MFHC's waiver form to document and input into a spreadsheet the following metrics, and annually share the following metrics with TPL for the previous calendar year by January 31st of every year. TPL understands that funders are increasingly requiring

metrics of impact, and believes that documenting the following metrics will help MFHC build capacity and demonstrate impact when raising its own funds after completion of the campaign, and help TPL demonstrate the impact of assisting communities to protect their wahi pana (sacred or storied places) and historic sites:

1. Participant name and email (waiver form should specify that email is required). MFHC does not have to share this information with TPL;
 2. Participant age, zip code where they live, school name (if they are attending school), name of group that they are with on the visit (if any);
 3. Whether participant is a returning participant and how many times the participant has visited the site. Example question: “Have you visited Kānewai Spring before? (Y/N) If yes, what number visit is this for you? (2, 3, 4, 5 or more)”;
 4. Whether the participant is of Native Hawaiian ancestry;
 5. What the participant is doing at Kānewai Spring. Example question: “What purpose describes your visit today? Check all that apply: (volunteer service learning, Hawaiian cultural practice (write out specific practices), educational visit, community meeting/gathering space, other (specify).”
- For participants with whom MFHC has an ongoing relationship, create and have those participants sign a waiver form in which they waive liability for the duration of their participation. Make sure that the form requires a signature by the participants legal guardian/parent if the participants is under 18 years of age. Document, include in the aforementioned spreadsheet, and annually share with TPL by January 31 of every year, the number of regular visits by interns, scientists, cultural practitioners, and others with whom MFHC has an ongoing relationship. TPL understands that since 2010, MFHC has welcomed a number of regular participants who now have deep and meaningful relationships with Kānewai Spring. TPL believes that documenting the number of visits by this group of regular participants will tell a more complete picture to future MFHC funders when added to the aforementioned metrics from participants that may only visit once or twice.

TPL and MFHC will:

- Work together on fundraising efforts including reviewing prospect lists, vetting them with each other, participating in donor strategy sessions, inviting potential donors to visit the spring, meeting with potential donors, meeting with knowledgeable people that could advise the campaign and/or connect the campaign to potential donors, reporting back on donor meetings, applying for grants, and other related tasks.
- If MFHC and TPL develop a campaign committee, it will be with the consent of both parties, and may include representatives from and individuals nominated by the staff of TPL, MFHC, the community, and others, and would:
 1. Be staffed by TPL and members of MFHC;
 2. Promote team building among all campaign leaders, workers, and additional volunteers or members;
 3. Identify key prospects and work with staff to develop strategies for approaching them;
 4. Participate in contact and solicitation calls with other team members and staff;
 5. Communicate gift recognition and acknowledgement opportunities accurately;
 6. Review and use campaign materials prepared by staff;

7. Assist with supporting volunteer follow-through on assigned responsibilities;
 8. Make a financial contribution to support the campaign; and
- Other fundraising efforts by both parties:
 1. Either party may include this campaign as part of a larger campaign, allowing for a larger pool of candidates and raising the profile of this effort, such as The Trust for Public Land's Power of Place Campaign; and,
 2. Either party may engage in fundraising activities outside this campaign, for general support of their organizations or for other activities unrelated to this effort. These efforts will not recognize the other party.
 - Solicitations:
 1. In all cases, both parties will attempt to ask prospects for cash and pledges that are the least restrictive, i.e., for the project as a whole, not components.
 - Gifts received:
 1. All pledges to the campaign will be accounted for by The Trust for Public Land;
 2. All restrictions will be written by the donor;
 3. No pledges will be accepted with payment schedules that exceed 1 year;
 4. No pledges will be accepted for amounts less than \$10,000;
 5. Pledges will be accepted only for schedules that include a payment within the campaign timeframe;
 6. Pledges received for the general effort will be collected as negotiated with the donor; and
 7. The Trust for Public Land does not accept conditional gifts or gifts that are restricted by the successful completion of the purchase of the Kānewai Spring Site.
 - Spending the contributions for the acquisition and stewardship:
 1. If we succeed in purchasing the Kānewai Spring Site, the campaign funds will be spent down as follows:
 - First Funds Out: Acquisition project expenses (\$___ goal) (to TPL)
 - Second Funds Out: Online fundraising fees (\$___ goal) (to TPL)
 - Third Funds Out: Conservation easement stewardship endowment (\$___ goal) (possibly through MFHC)
 - Fourth Funds Out: Split equally between TPL future conservation work (\$___ goal) and MFHC's Kānewai Spring stewardship fund (\$___ goal).
 2. If we receive more contributions than are needed, the additional contributions will cover any unforeseen project expenses of either MFHC or TPL, and then be divided evenly (50/50) between TPL and MFHC. TPL and MFHC may choose to contribute some of the possible additional funds raised to cover the signage discussed below.
 3. If the project succeeds (TPL purchases and conveys the Kānewai Spring Site to MFHC), but we receive less contributions than are needed (the campaign goal is not reached), the parties will split the funds as described in the Funding Scenarios that TPL and MFHC previously approved (attached as "Exhibit A"), and hereby confirm with the execution of this MOU.
 4. If the project fails (TPL and MFHC are not able to purchase the Kānewai Spring Site), TPL would immediately request permission from institutional and major donors (donations \$10,000 and above) to use their funds to cover the costs of the project as well as fund other work by both partner organizations. Any institutional

and major donors which want their funds returned will have their funds returned by the organization that is holding the funds. If these donors agree to use their funds for project costs and other TPL/MFHC work, funds would first be applied to cover the costs of the project, and then the remainder would be split 50/50 between TPL and MFHC. Donations under \$10,000 will not be returned and would first be applied to cover the costs of the project, and then the remainder would be split 50/50 between TPL and MFHC.

5. During the campaign, the parties will meet regularly to discuss and potentially revise the budget.
6. Any transfer from TPL to MFHC will be in the form of a grant.

- Donor Confidentiality:

1. Names, contact information, research reports, contribution amounts, and other information collected or disseminated through the course of this effort will be shared between TPL and MFHC unless a donor requests confidentiality specific to one or the other organization.
2. MFHC will not share this information outside of its Board of Directors.

- Signage:

1. The parties intend to erect a sign acknowledging this effort and the donors that helped protect Kānewai Spring.
2. TPL and MFHC would both like to contribute funds toward this signage but will have to determine what funds, if any, are available near or at the completion of this effort.
3. Any signage erected on the site that is within the control of TPL and MFHC will contain reference to TPL and MFHC in a manner that is acceptable to the parties, including the names and logos of both entities.

- Additional Memoranda of Understanding

1. The parties anticipate signing an additional MOU with the non-profit Administrative Holder of the Conservation Easement to be placed on the Kānewai Spring Site as a City funding condition.
2. For one year from the time that this MOU between TPL and MFHC is executed, or until after MFHC takes ownership of the Kānewai Spring Site (whichever is more), each party will not enter into another MOU with any other entity regarding the Kānewai Spring Site without previously consulting with the other party to ensure that the terms of this MOU are honored.

Acknowledged by:

The Trust for Public Land

Maunaloa Fishpond Heritage Center

Date: _____

Date: _____

EXHIBIT A FUNDING SCENARIOS

The following details how campaign funds will be used in five scenarios where different amounts of campaign funds have been raised:

SUMMARY BREAKDOWN

1	\$ _____ - \$ _____	Project Costs, TPL Support , LHKH, MFHC Support
2	\$ _____ - \$ _____	Project Costs, TPL Support, LHKH, MFHC Support
3	\$ _____ - \$ _____	Project Costs, TPL Support, LHKH, MFHC Support
4	\$ _____ - \$ _____	Project Costs, TPL Support, LHKH, MFHC Support
5	\$ _____	Project Costs, TPL Support, LHKH, MFHC Support

FIVE FUNDING SCENARIOS

1) \$ _____ RAISED – Project Costs, TPL Support , LHKH \$____, MFHC Support

\$	(TPL) Support for future conservation work (orig \$____K)
\$	(TPL) TPL Project Costs (orig \$____)
\$	(TPL) Online fundraising fees (orig \$____)
\$	(LHKH) Conservation Easement stewardship endowment (orig \$____)
\$	(MFHC) Initial Stewardship Expenses (orig \$____)
\$	(MFHC) - Master planning fees (orig \$____)
\$	(MFHC) Architecture/Engineering fees (orig \$____)
\$	Private fundraising goal (orig: \$____ Project Costs / \$____ TPL Support / \$____ MFHC Support)

2) \$ _____ RAISED – Project Costs, TPL Support, LHKH \$____, MFHC Support

\$	(TPL) Support for future conservation work (orig \$____K)
\$	(TPL) TPL Project Costs (orig \$____)
\$	(TPL) Online fundraising fees (orig \$____)
\$	(LHKH) Conservation Easement stewardship endowment (orig \$____)
\$	(MFHC) Initial Stewardship Expenses (orig \$-__)
\$	(MFHC) - Master planning fees (orig \$____)
\$	(MFHC) Architecture/Engineering fees (orig \$____)
\$	Private fundraising goal (orig: \$____ to TPL / \$____ to MFHC)

3) \$ ____ RAISED – PROJECT COSTS, TPL SUPPORT, LHKH \$ __ K, MFHC SUPPORT

\$	(TPL) Support for future conservation work (orig \$ __ K)
\$	(TPL) TPL Project Costs (orig \$ __)
\$	(TPL) Online fundraising fees (orig \$ __ K)
\$	(LHKH) Conservation Easement stewardship endowment (orig \$ __)
\$	(MFHC) Initial Stewardship Expenses (orig \$ __)
\$	(MFHC) - Master planning fees (orig \$ __)
\$	(MFHC) Architecture/Engineering fees (orig \$ __)
\$	Private fundraising goal (orig: \$ __ to TPL / \$ __ to MFHC)

4) \$ ____ RAISED – PROJECT COSTS, TPL SUPPORT, LHKH \$ __ K, MFHC SUPPORT

\$	(TPL) Support for future conservation work (orig \$ ____)
\$	(TPL) TPL Project Costs (orig \$ ____)
\$	(TPL) Online fundraising fees (orig \$ __)
\$	(LHKH) Conservation Easement stewardship endowment (orig \$ __)
\$	(MFHC) Initial Stewardship Expenses (orig \$ __)
\$	(MFHC) - Master planning fees (orig \$ __)
\$	(MFHC) Architecture/Engineering fees (orig \$ ____)
\$	Private fundraising goal (orig: \$ ____ to TPL / \$ ____ to MFHC)

5) \$ ____ RAISED – PROJECT COSTS, TPL SUPPORT, LHKH \$ __, MFHC SUPPORT

\$	(TPL) Support for future conservation work (orig \$ ____)
\$	(TPL) TPL Project Costs (orig \$ ____)
\$	(TPL) Online fundraising fees (orig \$ ____)
\$	(LHKH) Conservation Easement stewardship endowment (orig \$ __)
\$	(MFHC) Initial Stewardship Expenses (orig \$ __)
\$	(MFHC) - Master planning fees (orig \$ __)
\$	(MFHC) Architecture/Engineering fees (orig \$ __)
\$	Private fundraising goal (orig: \$ __ to TPL / \$ __ to MFHC)

APPENDIX C

SAMPLE WILLING SELLER LETTER

Date

ABC Land Trust
Address
Honolulu, HI Zipcode

Re: Name of Project/TMK

Dear _____ (addressed to land trust representative):

I am the owner (managing member, CEO) for NAME OF COMPANY, the owner of real property in the ____ area, O'ahu, Hawai'i, Tax Map Key Parcel (1) ____-____-____:____4 (the "Property").

Provided an acceptable price and terms can be negotiated, NAME OF COMPANY would be a willing seller of the Property.

Please let me know if you have any questions.

Very truly yours,

for NAME OF COMPANY

APPENDIX D

REAL PROPERTY TAX EXEMPTION AND REDUCTIONS

The following sections outline county real property tax reductions or exemptions¹ for non-profit organizations and private landowners who are voluntarily conserving their land. All of the tax breaks are subject to rollback taxes or payback provisions, requiring that the unpaid taxes that would have been due be paid back if the requirements of the program are not met. While a case can be made to county tax departments that the tax assessed value of property under a conservation easement should be reduced by the value of the conservation easement, in most cases, the forest/ag/open space dedication or non-profit tax exemption provide more favorable tax treatment. We strongly encourage any entity or landowner that plans to utilize these programs to consult with a licensed tax professional and/or lawyer.

HAWAI'I COUNTY

Landowners of forested areas may apply for a Native Forest Dedication. *See* County of Hawai'i, Native Forest Dedications. Recent changes to the law have expanded the benefit to functional forests and successional forests with new lava substrates. The taxable value of the land is assessed “at a preferential per-acre value in its restricted preservation use.” Haw. Cty. Code ch. 19, § 19-59(c) (2016). Agricultural Use Dedications may be obtained for land used for commercial agriculture for a period of ten years. *See* County of Hawai'i, Agricultural Use Dedication Handout. Applications must include sketches of the lot indicating specific agricultural use types for each area. *See* County of Hawai'i, Petition to Dedicate Land for Agricultural Use. The dedication value is assessed based on several factors, including: productivity, the quality of soil, and availability of water. Haw. Cty. Code ch. 19, § 19-60(c). The tax reductions under these programs are substantial, resulting in very low tax burdens.

Land zoned as urban may also be dedicated for open space. *See* County of Hawai'i, Petition to Dedicate Land for Open Space & Similar Uses. Land in urban districts that is dedicated for an approved use will be assessed the minimum tax, which is two hundred dollars (\$200). Haw. Cty. Code ch. 19, §§ 19-80(a) & 19-90(e). Hawai'i County also provides tax exemptions for charitable uses and kuleana lands. The tax exemptions for charitable use and kuleana lands reduces the tax burden to the \$200 minimum tax. Haw. Cty. Code ch. 19, §§ 19-77 & 19-89.5.

EXEMPTIONS

<http://www.hawaiipropertytax.com/exemptions.html>

DEDICATIONS

<http://www.hawaiipropertytax.com/dedications.html>

TAX RATES

http://www.hawaiipropertytax.com/tax_rates.html

¹ This section is intended to focus on county real property tax relief for non-profit organizations and private landowners that own land for conservation purposes, who have agreed to restrict their land uses via a conservation easement. For landowners conducting substantial agricultural activities on land in an Enterprise Zone, substantial general excise tax and income tax credits may be available. *See* Hawai'i Department of Business, Economic Development & Tourism, Enterprise Zones.

HONOLULU CITY & COUNTY

Five and ten-year Agricultural Use Dedications are available in Honolulu. *See* City and County of Honolulu, Petition to Dedicate Land for Agricultural Use. The percentage at which land is assessed differs based on the dedication period and use—five year dedications are assessed at 3% of the market value, ten year dedications are assessed at 1% of the fair market value, and pasture land for any dedication period is assessed at 1% of the fair market value. R.O.H. § 8-7.3(b)(2). If the land is vacant and dedicated for ten years, the assessment will only be for 50% of the fair market value. R.O.H. § 8-7.3(d). Landowners of parcels zoned as urban that are used for landscaping, open space, or for public recreation can also apply for dedications of at least ten years. *See* City and County of Honolulu, Petition to Dedicate Lands in Urban Districts. The portions of land dedicated to open space are exempted in assessing the value of the entire property. R.O.H. § 8-10.13.

Honolulu City & County also provides tax exemptions for non-profit tax exempt organizations that use land for charitable uses and kuleana lands. Exemptions for non-profits eliminate property tax liability for the organization so that no taxes are owed. R.O.H. § 8-10.10(b)(5)-(6). Any portion of the property used to produce income, even if in furtherance of the charitable purpose, is not exempt from property tax assessments. R.O.H. § 8-10.10(d).

FORMS

<https://www.realpropertyhonolulu.com/forms/>

KAUAI COUNTY

To take advantage of agricultural use dedications in Kauai County, the landowner must specify its agricultural uses, including: the specific crops planted, the pasture rotation, crop cycle planting, and harvesting or marketing schedule. *See* County of Kauai, Petition to Dedicate for Agricultural Use. The dedication period can be for either ten or twenty years. *Id.* Dedications for twenty years are assessed at 50% of the parcel's fair market value; there is no specific rate for a ten year dedication and the assessed value may vary based on the land's characteristics and the agricultural activities on it. § RP-2-9. To qualify for a tax reclassification based on the use of the property, the landowner must fill out the Use Survey Questionnaire.

Landowners may also qualify for tax exemptions for dedicated agricultural use, kuleana lands, non-profits, and tree farms. Kuleana lands are only subject to the minimum real property tax of \$150.00, residential properties owned by non-profit organizations that qualify for a historic property dedication qualify for a 75 to 100% tax exemption, tree farms are exempted from real property taxes during the portion of their dedication, and lands in urban areas dedicated as an open space or for public recreation are exempted from property tax for the duration of the dedication. 3 K.C.C. §§ 5A-11.29, 5A-1.22(a), 5A-11.26 & 5A-11.13. Exemptions for non-profits eliminate property tax liability for the organization. 3 K.C.C. § 5A-11.10(b)(5)-(6). Any portion of the property used to produce income, even if in furtherance of the charitable purpose, is not exempt from property tax assessments. 3 K.C.C. § 11.10(d). The minimum real property tax that can be assessed in Kauai County is one hundred fifty dollars (\$150). 3 K.C.C. § 5A-6.3(g).

FORMS AND HANDOUTS

<https://www.kauai.gov/RealProperty/TaxRelief>

TAX RATES

<https://www.kauai.gov/Government/Departments-Agencies/Finance/Real-Property/Tax-Rates>

MAUI COUNTY

Maui County provides an agricultural use dedication for either ten or twenty years that requires the filing party to provide income from each specific agricultural use for the past five years. *See* Maui County, Petition to Dedicate Land for Agricultural Use. Land dedicated for twenty years is taxed at 50% of the fair market value. 3 M.C.O. §3.48.350. To file for a charitable use exemption, non-profits must provide a copy of their By-Laws, Charter & IRC 501(c)(3) Determination Letter. *See* Maui County, Claim for Charitable and Miscellaneous Exemption. Non-profits are exempt from all real property taxes. 3 M.C.O. § 3.48.495. Maui also provides tax exemptions for taro farming and kuleana land. Kuleana land exemptions exempt the portion of land designated as kuleana land from real property taxes. 3 M.C.O. § 3.48.554. Taro farms are also exempted from all property taxes. 3 M.C.O. § 3.48.175. Any property completely exempt from real property taxes is assessed the minimum real property tax, unless it is a taro farm that meets certain criteria or kuleana land. *Id.* The minimum real property tax is one hundred fifty dollars (\$150), as of 2020. *Id.*

FORMS AND INFORMATION

<https://www.mauicounty.gov/1953/RPA-Forms-and-Instructions>

AGRICULTURAL USE ASSESSMENT FAQ

<https://www.mauicounty.gov/faq.aspx?TID=96>

ANNUAL BUDGET

<https://www.mauicounty.gov/1896/Budget-Documents-Ordinances>

APPENDIX E

TABLE OF SAMPLE FEDERAL FUNDING PROGRAMS

FEDERAL LAND CONSERVATION FUNDING SOURCES USED IN HAWAI‘I (NOT A COMPREHENSIVE LIST)

RESOURCES	AGENCY	PROGRAM	FUNDING/SUPPORT	MORE INFO
Expansions of National Parks, Wildlife Refuges, Forests, Lands and Monuments, and Recreation Areas	National Park Service, USDA Forest Service, National Fish & Wildlife Service	Land and Water Conservation Fund (LWCF)	Provides 100% funding to expand or establish national public lands.	https://www.doi.gov/lwcf In HI, this fund has established or expanded Volcanoes and Haleakalā National Parks, Kāloko-Honokōhau National Historic Park, Pu‘uhonua O Hōnaunau National Historic Park, and part of the Ala Kahakai National Historic Trail, and Hakalau, Kīlauea, and James Campbell National Wildlife Refuges.
Planning, developing and acquiring land and water areas for natural resource protection and recreation enhancement	National Park Service (NPS) (administered by State Parks, DLNR in HI)	Land and Water Conservation Fund (LWCF) - Stateside	Provides up to 50% match. No other federal funds may be used as match. Funds are distributed to states based on pop. & need. Counties, state agencies and tribes are eligible.	In HI, this fund is often used for park improvement and park land acquisition. For example, part of Ala Moana Regional Park was acquired with these funds. http://www.nps.gov/nrcr/programs/lwcf/fed_state.html
Rivers, trails, greenways	NPS	Rivers, Trails, and Conservation Assistance (RTCA) Program	Provides technical assistance to state or local agency, tribe, non-profit organization, or citizens' group.	NPS RTCA staff build partnerships to achieve community-defined goals, assessing resources, developing concept plans, engaging public participation, and identifying potential sources of funding. In HI, used to support community planning and implementation efforts for Lei of Parks and the Leeward Bike Path through HI Bicycling League. http://www.nps.gov/nrcr/programs/rtca/
Forests threatened by conversion to non-forest uses. Important scenic, cultural, fish, wildlife & recreational resources, riparian areas & other ecological values.	USDA Forest Service	Forest Legacy Program	Provides up to 75% for conservation easements (CEs) or fee acquisitions. The land must be identified in the State plan as a forest legacy area. State may submit up to three applications per year totaling no more than \$10 million.	Projects are submitted to a state committee, which ranks and sends the project to the U.S. Forest Service regions for prioritization. National criteria include: threat, importance (environmental, economic and social public benefits), strategic (fits within a larger conservation strategy, plan or initiative), and other factors (e.g., public access). In HI, the State has used these funds to acquire forest reserves at Helemano and Waimea (North Shore of O‘ahu). The Office of Hawaiian Affairs was also able to acquire Wao Kele O Puna with these funds. www.fs.fed.us/spf/coop/programs/loa/aboutflp.shtml
Coastal & estuarine lands considered important for their ecological, conservation, recreational, historical or aesthetic value; or those that are threatened by conversion.	National Oceanic and Atmospheric Administration (NOAA)	Coastal Estuarine Land Conservation Program (CELCP)	Fee or CE acquisition. Max federal grant was \$3M/project. Required 1:1 match from non-federal sources. State, county, and tribal governments eligible..	This program has not been funded since FY2018. Acquisitions must be consistent with State's Coastal Zone Management Plan. In HI, CELCP funds were used to acquire land at Honu‘apo on Hawai‘i Island, Mūole‘a Point on Maui, and Pūpūkea-Paumalū on O‘ahu's North Shore. https://coast.noaa.gov/czm/landconservation/

(CONTINUED ON NEXT PAGE)

RESOURCES	AGENCY	PROGRAM	FUNDING/SUPPORT	MORE INFO
Lands buffering military training areas or habitat for T&E species impacted by military operations.	Department of Defense	Readiness and Environmental Protection Integration Program (REPI)	Match requirements vary with each service, but REPI funds can sometimes count as “match” for other federal funding programs (e.g., ACEP, USFWS)	Each service has slightly different requirements, but all require some kind of partnering agreement (e.g., a cooperative agreement) with a land trust or conservation organization. Funds can be used for state/county or NGO land acquisitions and conservation easements. The process is competitive within each service and among the services, requiring each installation to work with its training staff on a plan/map identifying priority encroachment areas. This program has funded land conservation projects on O’ahu’s North Shore/Central O’ahu region and West Side including Pūpūkea-Paumalū, Waimea Valley, Turtle Bay Makai (Kahuku to Kawela Forever), the Turtle Bay Mauka Agricultural Lands, the Helemano Wilderness Area, the Galbraith Agricultural Lands of Lihu’e, Whitmore, and the Honolulu Forest Reserve. In Hawai’i, only the Army and Navy have successfully tapped these funds. The Marines are starting a program in HI. The Trust for Public Land has agreements with the Army and Navy and is working on one with the Marines. https://www.repi.mil/
Farm and ranch land.	U.S. Department of Agriculture, Natural Resource Conservation Service (USDA NRCS)	Agricultural Conservation Easement Program (ACEP) (formerly known as the Farm & Ranchland Protection Program)	Up to 50% of cost of conservation easement (up to 25% donated land value may count as match); eligible entities are states, counties, tribes, and NGOs (land trusts)	This is a conservation easement program intended to conserve farm and ranch land. Landowners must meet certain income limitations to qualify. In HI, land trusts have been the applicant to this program and the owner/holder of the conservation easement. Sunset Ranch on O’ahu’s North Shore is encumbered by a conservation easement funded by this program held by the North Shore Community Land Trust. https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/acep/
Habitat for federally protected threatened and endangered (T&E) species	U.S. Fish & Wildlife Service	Cooperative Endangered Species Conservation Fund (Section 6)	Up to 75% for fee or CE acquisition. State, county, and tribal governments are eligible.	There are two programs: 1) Habitat Conservation Plan (HCP) Land Acquisition Program – must complement and exceed approved HCP preserve areas. This program conserved Hawaiian Hoary Bat habitat at Helemano on O’ahu and Kamehamehenui on Maui. 2) Recovery Land Acquisition (RLA) Program – must be consistent with recovery plans for the species. This program conserved turtle nesting areas at Kāwā on Hawai’i Island, and ‘Elepaio bird habitat at Moanalua Valley and plants at Waimea Valley on O’ahu. http://www.fws.gov/endangered/grants/index.html
Rails-to-trails, water pollution mitigation, wildlife connectivity, and scenic beautification — related in some way to transportation.	U.S. Department of Transportation, Federal Highway Administration	Transportation Enhancements (TE)	The State must reserve at least 10% of its federal Surface Transportation Program dollars for transportation enhancement activities. Covers up to 80% of cost. Administered through State DOT.	TE activities are federally-funded, community-based projects that expand travel choices and enhance the transportation experience by improving the cultural, historic, aesthetic and environmental aspects of our transportation infrastructure. TE projects must be one of 12 eligible categories of projects, including: pedestrian & bike facilities, acquisition of scenic or historic easements & sites, historic preservation, rails to trails, mitigation of runoff pollution & enhancement of wildlife connectivity. In HI, this program was used by the City and County of Honolulu to acquire Waiāhole Beach Park. https://www.fhwa.dot.gov/Environment/transportation_enhancements/

Endnotes

- 1 For more information on the “public support” test, see IRS Publication 557: Tax Exempt Status for Your Organization.
- 2 Fee simple: The broadest claim to property someone can have, where the property is not burdened by alternative claims of ownership or undue restrictions. *Black’s Law Dictionary* (11th ed. 2019). Most private land in Hawai‘i is sold in fee-simple. Notable exceptions include, for example, Kamehameha Schools/Bishop Estate’s long-term leases of residential and agricultural property – the length of the leases vary, but can be very long.
- 3 An endowment usually is perpetual. The land trust will deposit a donor’s cash gift in a conservatively invested fund that generates annual income used to fund the land trust’s work to manage the land or monitor the conservation easement.
- 4 Fair market value: “The price that a seller is willing to accept and a buyer is willing to pay on the open market. . . .” *Black’s Law Dictionary* (11th ed. 2019). As a practical matter, a licensed appraiser usually determines the “fair market value” of land in conservation transactions in a formal appraisal report.
- 5 Appraisal: The determination, usually in the form of a report, of what the fair value of a property is. *Black’s Law Dictionary* (11th ed. 2019). As used in this guide, an “appraisal” refers to an appraisal report prepared a licensed an appraiser.
- 6 The amount had been up to 10% or \$6.8 million, whichever was lower. However, during the 2020 COVID-19 session, the Legislature amended the law to decrease the amount to 10% or \$5.1 million, whichever is lower. 2020 Act 9 (SB126 CD1). Prior to this 2020 amendment, the Legislature had set a \$5.1 million “spending ceiling” for the program in the annual budgeting process which was lower than the pre-2020 \$6.8 million minimum going into the fund. Over a number of years, this resulted in a large unspent amount to build up the LLC special fund that program staff were unable to access for the grant application process, exposing the unspent amount to raids in times of economic crisis.
- 7 Revised Charter of Honolulu, Section 9-204 and codified in the Revised Ordinances of Honolulu Chapter 6, Article IX, Section 9-204.
- 8 Charter of the County of Maui, Article 9, Section 9-19 and the Maui County Code, Article 3, Section 88.
- 9 Hawai‘i County Charter, Article 10, Section 10-15 and the Hawai‘i County Code, Article 42, Section 2-214.1.
- 10 Kaua‘i County Charter, Article 19, Section 19.15 and the Kaua‘i County Code, Chapter 6, Article 14
- 11 In accordance with American Society for Testing and Materials (ASTM) Standard E1527-13.
- 12 In an exception to this general rule, The Trust for Public Land agreed to hold/own a conservation easement over the Ka ‘Iwi Coast Mauka Lands owned by the Ka ‘Iwi Coalition under Livable Hawai‘i Kai Hui.