



Preservation  
Seminar:  
Conservation and  
Preservation  
Easements

June 9, 2021





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# HISTORIC HAWAI'I FOUNDATION

A statewide non-profit advocacy organization, **Historic Hawai'i Foundation** encourages the preservation of historic buildings, sites, structures, objects and districts relating to the history of Hawai'i.

We help people save Hawai'i's historic places.

[www.HistoricHawaii.org](http://www.HistoricHawaii.org)





**THE  
TRUST  
FOR  
PUBLIC  
LAND**

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The Trust for Public Land creates parks and protects land for people, ensuring healthy, livable communities for generations to come.

[www.tpl.org](http://www.tpl.org)



**HAWAI'I LAND TRUST**

The Hawai'i Land Trust takes a uniquely Hawaiian and holistic approach to land conservation. We conserve lands that enable Hawai'i's long-term well-being, lands with scenic views, agricultural resources, wildlife habitats, water resource areas, cultural and historical values, and outdoor recreation opportunities. We seek to complement the stewardship others are providing for mountaintop watersheds by concentrating largely on needs and opportunities for coastal and agricultural lands. HILT protects land primarily through the use of Conservation Easements held in perpetuity.

[www.hilt.org](http://www.hilt.org)



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Kuahiwi Ranch is a family-owned and operated cattle ranch in Ka'ū on Hawai'i Island. It is run by three generations of the Galimba family. Begun in 1993, Kuahiwi Ranch operates on 9000 acres between Wood Valley and Waiohinu, with pasture between sea-level up to 2100'.

Kuahiwi Ranch has two conservation and preservation easements that encumber lands the ranch owns at Kāwala.

[www.Kuahiwiranch.com](http://www.Kuahiwiranch.com)





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American Planning Association  
**Hawaii Chapter**

*Creating Great Communities for All*

The American Institute of Certified Planners (AICP) is the APA's professional institute providing recognized leadership nationwide in the certification of professional planners, ethics, professional development, planning education, and the standards of planning practice.

[www.hawaii.planning.org](http://www.hawaii.planning.org)



The Hawaii State Bar Association has been a part of Hawai'i since 1899, when the Association was founded by a handful of volunteer lawyer members. The organization was incorporated in 1985 and in 1989 became the professional trade association for all lawyers licensed to practice law in Hawai'i.

The mission of the Hawai'i State Bar Association is “to unite and inspire Hawai'i's lawyers to promote justice, serve the public, and improve the legal profession.”

[www.hsba.org](http://www.hsba.org)



## ABOUT THIS COURSE

Using Easements for land conservation and historic preservation

Purposes and types of easements, structure and stipulations

Statutory and regulatory requirements

Working with land trusts and preservation organizations to establish, monitor, maintain and comply with easements

Financing, tax credits, deductions and funding sources





# What Is A Conservation Easement?





# What's a Conservation Easement?

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## HRS § 198-1

### § 198-1. Conservation easement defined

For the purposes of this chapter, a “conservation easement” is an interest in real property created by deed, restrictions, covenants, or conditions, the purpose of which is to:

- (1) Preserve and protect land predominantly in its natural, scenic, forested, or open-space condition;
- (2) Preserve and protect the structural integrity and physical appearance of cultural landscapes, resources, and sites which perpetuate indigenous native Hawaiian culture;
- (3) Preserve and protect historic properties as defined in [section 6E-2](#), and traditional and family cemeteries; or
- (4) Preserve and protect land for agricultural use.



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# What's a Conservation Easement?

HRS § 198-1

§ 198-1. Conservation Easements

For the purposes of this chapter, a "conservation easement" means a voluntary agreement, deed, restriction, covenant, or other instrument, the purpose of which is to:

(1) Preserve and protect natural, scenic, historic, or open-space condition;

(2) Preserve and protect the cultural and physical appearance of cultural landscapes, resources, and sites which are of historic or cultural value;

(3) Protect historic properties as defined in [section 6E-2](#), and traditional and family cemeteries; or

(4) Preserve and protect land for agricultural use.

VOLUNTARY





# What is a Conservation Easement?

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- A voluntary, legal agreement that permanently limits the uses of land in order to protect its conservation values.
- It is a real property interest.
- It should not be confused with road, utility, or access easements or rights of way.
- One option to protect a property for future generations.



# Western Property Rights

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**Property Rights = Bundle of Sticks**



# Western Property Rights

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**“Stick” = A Landowner’s Right to ...**



# Western Property Rights

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**Property Rights = Bundle of Sticks**

**“Stick” = A Landowner’s Right to ...**

- Use and Enjoy
- Build
- Subdivide
- Logging
- Extract Minerals
- Extract Water
- Exclude
- Sell
- Etc.



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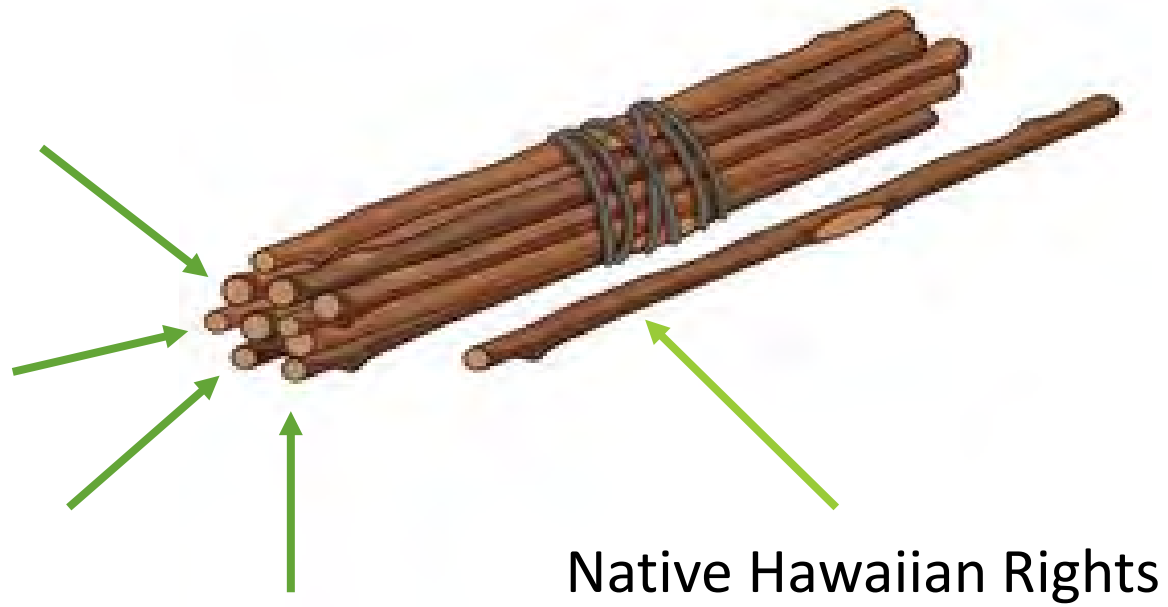
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CONSERVATION EASEMENT



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# Western Property Rights

## CONSERVATION EASEMENT



- Placed over the land in perpetuity
- A real property interest held by a land trust or government agency
- “Holder” or “Co-holders” have the duty to monitor annually and enforce violations

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- ~~Subdivide~~
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- ~~Exclude~~
- Sell
- Etc.



# Benefits of Conservation Easements to Landowners

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- Can be an effective tool to protect land, often at lower cost to land trusts and public agencies.
- Legally binding agreement between a landowner and a land trust or gov't agency where landowner retains many private property rights.
- If donated, conservation easements may provide valuable tax benefits to landowners.
- Keep land in private ownership, continuing to provide economic benefits to the area.
- Do not automatically make properties open to the public.



# Federal Conservation Easement Tax Incentives

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If a conservation easement is voluntarily donated to a land trust or government agency, and if it **benefits the public by permanently protecting important conservation resources**, it can qualify as a **charitable tax deduction** on the donor's federal income tax return.

- First enacted temporarily in 2006, the tax incentive was made permanent in 2015 and increases the benefits to landowners by:
  - Raising the deduction a donor can take for donating a conservation easement to 50%, from 30%, of his or her annual income;
  - Extending the carry-forward period for a donor to take a tax deduction for a conservation agreement to 15 years from 5 years; and
  - Allowing qualifying farmers and ranchers to deduct up to 100% of their income, increased from 50%.



# Federal Law – Internal Revenue Code

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## 26 U.S.C. §170(h)(1)

For purposes of subsection (f)(3)(B)(iii), the term “qualified conservation contribution” means a contribution

- (A) of a qualified real property interest,
- (B) to a qualified organization,
- (C) exclusively for conservation purposes.





# Federal Law – Internal Revenue Code

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## 26 U.S.C. §170(h)(2)

A qualified real property interest is any of the following interests in real property:

- (A) the entire interest of the donor other than a qualified mineral interest,
- (B) a remainder interest, and
- (C) a restriction (granted in perpetuity) on the use which may be made of the real property [i.e., a conservation easement]



# Federal Law – Internal Revenue Code

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## 26 U.S.C. §170(h)(3)

A qualified organization is:

(A) is described in clause (v) or (vi) of subsection (b)(1)(A) [governmental entity or public charity], or

(B) is described in section 501(c)(3) [tax exempt organizations] and—

(i) meets the requirements of section 509(a)(2) [public support test], or

(ii) meets the requirements of section 509(a)(3) [supporting organization] and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

**Land trusts and historic preservation organizations are “qualified organizations”**



# Conservation Land Trusts in Hawai'i

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200,000+ acres (43,000 in preserves)



56,700+ acres

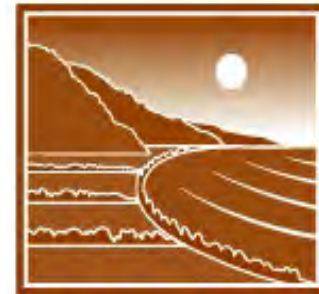


HAWAI'I LAND TRUST

21,650 acres  
(2,100 in preserves)



1,965 acres



NORTH SHORE  
COMMUNITY  
LAND TRUST

4,100 acres

Hālawā Valley  
Land Trust

4 acres



# Other qualified organizations holding conservation easements

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Livable Hawai'i Kai Hui



Kānewai Spring owned by Maunalua Fishpond Heritage Center *Photo Credit: Nate Yuen*

Ala Kahakai Trail Association



Manaka'a owned by Kuahiwi Ranch





# Federal Law – Internal Revenue Code

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## 26 U.S.C. §170(h)(4)

Qualified conservation purposes include:

**(A) In general** For purposes of this subsection, the term “conservation purpose” means—

- (i) the preservation of land areas for outdoor recreation by, or the education of, the general public,
- (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- (iii) the preservation of open space (including farmland and forest land) where such preservation is—
  - (I) for the scenic enjoyment of the general public, or
  - (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or
- (iv) the preservation of an historically important land area or a certified historic structure



# CE Examples – Conservation Purposes

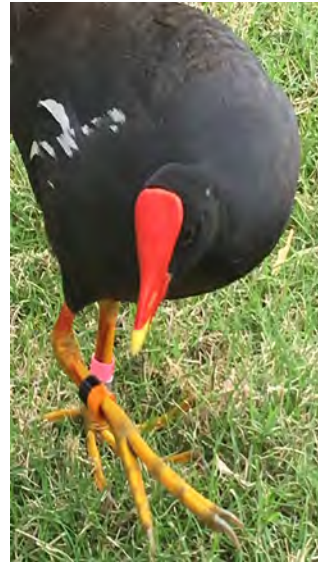
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Hakipu'u Kalo Lo'i - 'āina based education  
Landowner: Ho'ala 'Āina Kūpono  
CE Holder: Hawai'i Land Trust and C&C



Hāwea Heiau/Keawāwa Wetlands – habitat  
Landowner: Livable Hawai'i Kai Hui  
CE Holder: City and County of Honolulu



Kealakekua Coffee Lands – farm & native Forest  
Landowner: Honolulu Coffee Company  
CE Holder: Hawai'i Land Trust





Kiolaka'a Macadamia Nut Farm  
 Landowner: Royal Hawaiian Orchards  
 CE Holder: Hawai'i Land Trust



Keopuka (Cultural sites, shoreline)  
 Landowner: Pacific Star Co.  
 (1250 Oceanside Partners)  
 CE Holder: Hawai'i Land Trust



Hawea Point (Native Habitat & Coastal Access)  
 Landowner: Private Individual  
 CE Holder: Hawai'i Land Trust



# Appraisals

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- **Qualified experienced appraiser** familiar with appraising conservation easements and completing IRS tax documentation
- Expense of a CE appraisal will be higher as it is **two appraisal in one** –
  - an appraisal of the value of the unencumbered fee simple value of the property, and
  - a second appraisal of the value of the property encumbered with the Conservation Easement.

**Unencumbered Fee Value – Encumbered Value = CE Value**





# Additional IRS regulations/forms

- U.S. Treasury Regulations, 26 C.F.R. § 1.170A-14
- IRS Form 8283

Form <b>8283</b> (Rev. December 2020) Department of the Treasury Internal Revenue Service	<b>Noncash Charitable Contributions</b> ▶ Attach one or more Forms 8283 to your tax return if you claimed a total deduction of over \$500 for all contributed property. ▶ Go to <a href="http://www.irs.gov/Form8283">www.irs.gov/Form8283</a> for instructions and the latest information.	OMB No. 1545-0074  Attachment Sequence No. <b>155</b>
Name(s) shown on your income tax return		Identifying number

**Note:** Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

**Section A. Donated Property of \$5,000 or Less and Publicly Traded Securities**—List in this section **only** an item (or a group of similar items) for which you claimed a deduction of \$5,000 or less. Also list publicly traded securities and certain other property even if the deduction is more than \$5,000. See instructions.

<b>Part I Information on Donated Property</b> —If you need more space, attach a statement.		
1	(a) Name and address of the donee organization	(b) If donated property is a vehicle (see instructions), check the box. Also enter the vehicle identification number (unless Form 1098-C is attached).
A		<input type="checkbox"/>
B		<input type="checkbox"/>
C		<input type="checkbox"/>
D		<input type="checkbox"/>
E		<input type="checkbox"/>

<b>Part IV Declaration of Appraiser</b>		
I declare that I am not the donor, the donee, a party to the transaction in which the donor acquired the property, employed by, or related to any of the foregoing persons, or married to any person who is related to any of the foregoing persons. And, if regularly used by the donor, donee, or party to the transaction, I performed the majority of my appraisals during my tax year for other persons.		
Also, I declare that I perform appraisals on a regular basis; and that because of my qualifications as described in the appraisal, I am qualified to make appraisals of the type of property being valued. I certify that the appraisal fees were not based on a percentage of the appraised property value. Furthermore, I understand that a false or fraudulent overstatement of the property value as described in the qualified appraisal or this Form 8283 may subject me to the penalty under section 6701(a) (aiding and abetting the understatement of tax liability). I understand that my appraisal will be used in connection with a return or claim for refund. I also understand that, if there is a substantial or gross valuation misstatement of the value of the property claimed on the return or claim for refund that is based on my appraisal, I may be subject to a penalty under section 6695A of the Internal Revenue Code, as well as other applicable penalties. I affirm that I have not been at any time in the three-year period ending on the date of the appraisal barred from presenting evidence or testimony before the Department of the Treasury or the Internal Revenue Service pursuant to 31 U.S.C. 330(c).		
<b>Sign Here</b>	Appraiser signature ▶	Date ▶
	Appraiser name ▶	Title ▶
Business address (including room or suite no.)		Identifying number
City or town, state, and ZIP code		

<b>Part V Donee Acknowledgment</b>		
This charitable organization acknowledges that it is a qualified organization under section 170(c) and that it received the donated property as described in Section B, Part I, above on the following date ▶		
Furthermore, this organization affirms that in the event it sells, exchanges, or otherwise disposes of the property described in Section B, Part I (or any portion thereof) within 3 years after the date of receipt, it will file <b>Form 8282</b> , Donee Information Return, with the IRS and give the donor a copy of that form. This acknowledgment does not represent agreement with the claimed fair market value.		
Does the organization intend to use the property for an unrelated use? . . . . . ▶ <input type="checkbox"/> Yes <input type="checkbox"/> No		
Name of charitable organization (donee)		Employer identification number
Address (number, street, and room or suite no.)		City or town, state, and ZIP code
Authorized signature	Title	Date



# State and Local Tax Incentives for Conservation Easements

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- Lands under CE can be enrolled into agricultural or native forest types of dedications that can substantially decrease real property taxes.
- County real property assessors should reduce the value of property burdened with CEs and can be provided with the appraisal.
- 14 states provide state tax credits for CE donations. Hawai'i is not among those states.

# Conservation Easements – Structure & Common Stipulations

LAND COURT	REGULAR SYSTEM
AFTER RECORDATION, RETURN BY Mail ( ) Pickup (X) to:	
Bays Lung Rose & Holma (JKC) Topa Financial Center 700 Bishop Street, Suite 900 Honolulu, Hawai'i 96813 Telephone: (808) 523-9000	TG: <u>2019 61776</u> TGE: <u>2109139102</u> Jeremy Trueblood
TITLE OF DOCUMENT: <b>GRANT OF CONSERVATION EASEMENT</b> (For Cultural Heritage and Agricultural Preservation) <b>KUAHIWI RANCH</b>	
PARTIES TO DOCUMENT:	
"Grantor":	Kuahiwi Contractors, Inc., dba Kuahiwi Ranch, a Hawai'i corporation, whose mailing address is P.O. Box 24, Nā'ālehu, Hawai'i 96772
"Administrative Holder":	Ala Kahakai Trail Association, a Hawai'i non-profit corporation, whose mailing address is P.O. Box 2338, Kamuela, Hawai'i 96743
"Co-Holder":	Ho'omalū Ka'ū, a Hawai'i non-profit corporation, whose mailing address is P.O. Box 384, Nā'ālehu, Hawai'i 96772
Tax Map Key Nos.: See Exhibit D	This document contains <u>63</u> pages.

- WHEREAS clauses setting context for future owners/readers of the CE, defining "Conservation Values" on the land that are to be protected
- GRANT OF CONSERVATION EASEMENT (perpetual)
- CONSERVATION EASEMENT RESTRICTIONS – the sticks being taken away (e.g., no subdivision, no residential or other development, no up-zoning, impervious surface limitation, management per an approved forest or other management plan)
- RIGHTS OF GRANTOR OR LANDOWNER (e.g., rights to sell/pass to heirs, privacy/quiet enjoyment, etc.)
- RIGHTS OF GRANTEE OR CE HOLDER (e.g., right to enforce, enter property for monitoring)
- GENERAL PROVISIONS (e.g., notices, allocation of liabilities/expenses, indemnities, environmental liabilities, amendment, assignment, extinguishment)
- ATTACHMENTS: property description, survey maps, baseline monitoring report (may include important report such as archeological inventory survey)



# Funding Sources – Federal

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- **Land & Water Conservation Fund** (offshore oil drilling lease revenues)
  - National Park Service (e.g., park expansions)
  - U.S. Fish & Wildlife (e.g., Recovery Lands Acquisition Program, Migratory Bird Program, Coastal Wetlands Program, Refuge expansions)
  - U.S. Forest Service (e.g., U.S. Forest Legacy Program, Community Forest program)
  - National Oceanic Atmospheric Administration (e.g., Coastal Estuarine Land Conservation Program)
- **Department of Defense** (REPI or buffer program)
- **Department of Transportation** (e.g., Transportation Enhancements)
- **USDA Agricultural Conservation Easement Program**



# Funding Sources – State and Local

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- **State Legacy Land Conservation Program** (10% of real estate conveyance tax up to approx. \$5-6M) – administered by the Legacy Land Conservation Commission via open application, approved by BLNR, released by Governor
- **City and County of Honolulu Clean Water & Natural Lands Fund** - .5% of real property taxes, administered by CWNL Commission via open application, B&F, and Land Management, budget approved by Council, and released/authorized by Mayor
- **Maui Open Space Fund** - 1% of real property taxes, administered by Mayor, Council
- **Kaua'i Public Access, Open Space, and Natural Resources Preservation Fund** - .5% of real property taxes, administered by an advisory commission, Council, Mayor
- **Hawai'i County Public Access, Open Space, Natural Resources Preservation Fund** - 2% of real property taxes, administered by an advisory commission, Council, Mayor
- **Appropriations** – capital appropriations, general obligation bonds

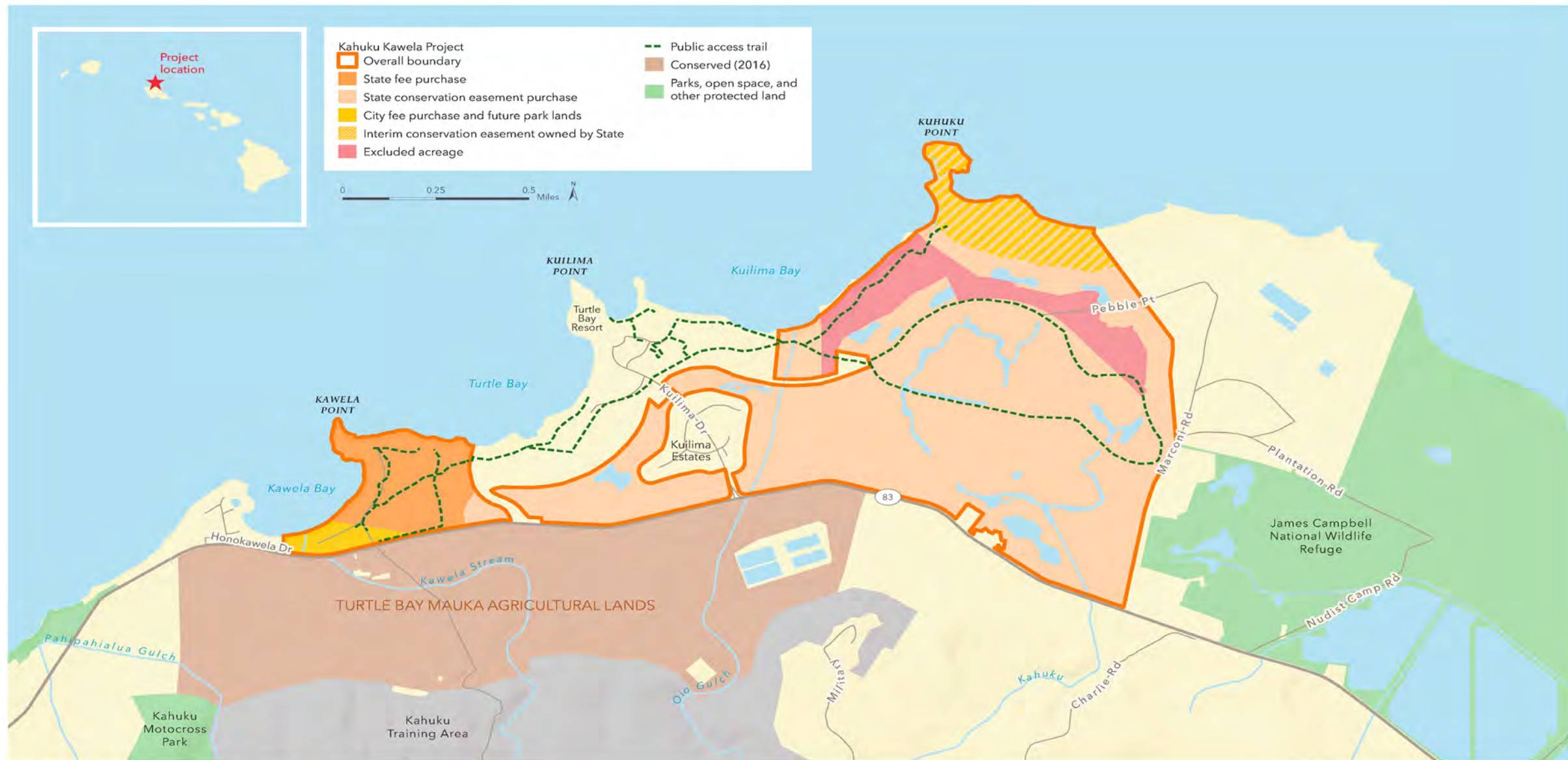




Kahuku  
Kawela  
Forever  
(Turtle Bay  
Resort) CEs

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# Kahuku Kawela Forever

ISLAND OF O'AHU, HAWAII

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THE TRUST FOR PUBLIC LAND



# Kahuku Kawela Funding Sources - Makai

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- \$35 million State (general obligation bond, annual debt service financed by 1.5M TAT/1.5M Legacy Land Conservation Program)
- \$7.5 million City and County of Honolulu
- \$2.5 million DoD Readiness and Environmental Protection Integration (REPI) program (Army buffer)

**TOTAL: \$45 million**

- **634 acres conserved**
  - 569 acres under Conservation Easement held by State
  - 52.5 acres owned in fee by State with lease back to Resort for nominal rent for 65 years
  - 12.5 acres owned in fee by City with lease back to Resort for nominal rent for 65 years



# Kahuku Kawela Funding Sources - Mauka

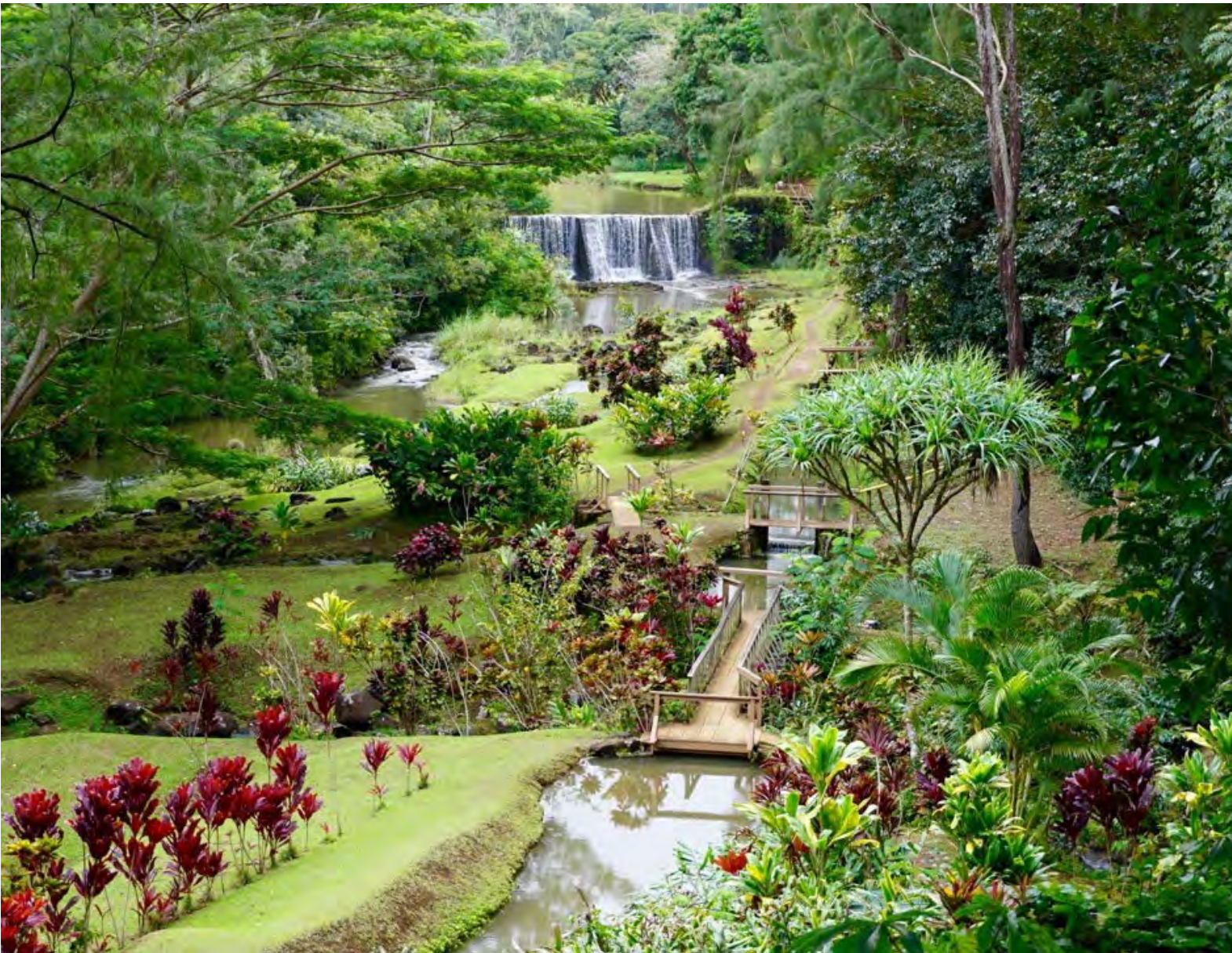
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- \$3 million DoD Readiness and Environmental Protection Integration (REPI) program (Army buffer)
- \$1.5 million State Legacy Land Conservation Program
- \$1.5 million City and County of Honolulu Clean Water & Natural Lands Program

**TOTAL: \$6 million**

**468 acres under conservation easement held by North Shore Community Land Trust**





## Working with Land Trusts/ Historic Preservation Organizations to Establish Easements

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- Reliable Partners
- Lead public funding effort
- Stewardship & enforcement  
endowment donations expected  
from landowner at closing
- Have their own internal  
approval processes
- Can only pay appraised FMV for  
a compensated easement
- Timeline is usually long  
(especially for compensated  
easements)





MENTS

EDITING MAP ITEM (PROPERTIES)

Name: Pond  
Description: No Data  
Map Label: P1  
Map Item Type: Construction  
Map Item Status: No data  
Species: No data

+ PHOTOS

# Annual Conservation Easement Monitoring/Reporting

- Annual on-site visit to check protected features and characteristics
- Confirm compliance with stipulations
- Address any questions, concerns, upcoming issues or problems
- Review CE terms together for common understanding
- Document the annual visit and results in writing for all parties
- Address any corrective actions or remediation needed
- Meet any new staff, owners or agents
- Confirm communication protocols and contact info



# Landowner Best Practices On Complying with Conservation Easements

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Before signing/recording:

- Have your own counsel before signing
- Involve next generation(s)

Once recorded:

- Ask the CE Holder to review final document with entire landowner entity (family, company, Board of Trustees)
- Join annual monitoring walk throughs.
- If in doubt, ask CE Holder.
- Work in partnership with CE Holder to address CE issues caused by adjacent or nearby properties.
- Tell CE Holder if you plan to sell, and when property is sold.
- Connect CE Holder with new buyer/owner.





# Pitfalls/Issues To Be Aware Of

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- Perpetuity is forever. Easement amendment is difficult
- Donating an easement can be expensive
- Deductions for donated easements can trigger IRS scrutiny
- Timing: longer than you may expect
- Land is a sensitive topic in Hawai'i
- Many people do not understand conservation or historic preservation easements



# Case Study

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KUAHIWI RANCH





# Kuahiwi Ranch

Ka'ū, Hawai'i Island

Approximately 9000 acres - mostly leased

Produce grass-fed beef for local markets  
(Foodland, Whole Foods) and restaurants

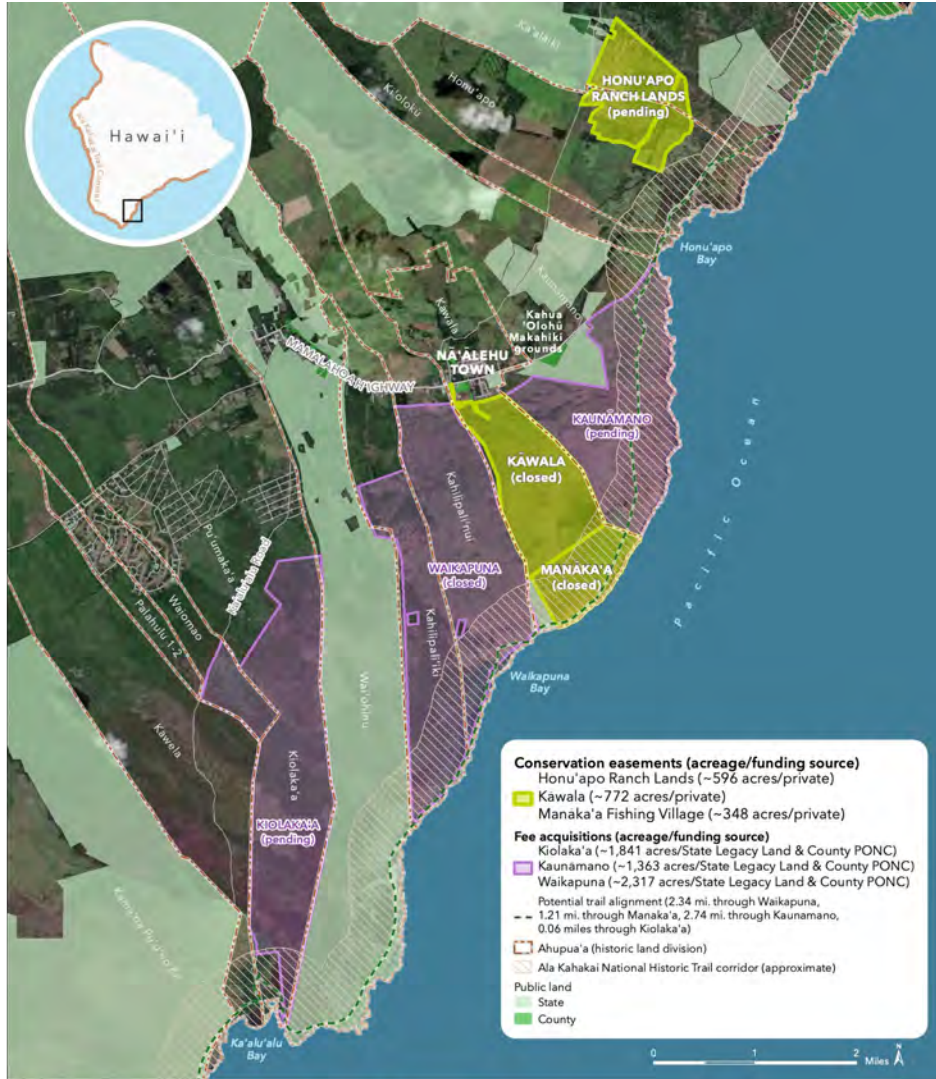
Family owned and operated











## Conservation Easement Projects

2019 - Kāwala - 772 acres

2021 - Manaka'a - 348 acres

Proj. 2021 - Honu'apo - 596 acres

## Protecting Ka'ū's Coast

HONU'APO RANCH LANDS, KĀWALA, MANĀKA'A FISHING VILLAGE, KIOLAKA'A, KAUNĀMANO, AND WAIKAPUNA, HAWAII ISLAND

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# Timeline for the Kāwala Conservation Easement Project

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- Purchased Property July 2018
- Began working on drafting Conservation Easement in 2019
- CE closed January 1, 2020
- Still outstanding - agricultural plan, cultural resource plan, fire plan









# Considerations before starting a CE Project

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- Conservation Easement is **FOREVER** so it needs to be something that not only you but the next generation (at least) is committed to **COMPLETELY**.
- **Community** - does it fit with community's vision?
- **Flexibility** - what kind of flexibility for future needs can you include without compromising the conservation values?
- **Costs** - legal, appraisal and surveying
- **Capacity** - do all partners have the capacity now and in the future to honor the parameters of the conservation easement?















# Conservation Easements Pros and Cons

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## PRO

Effective tool to **preserve landscapes & conserve natural resources**

Can help farmers & ranchers to **defray costs** of agricultural land acquisition

Can help to **align community values** with private land owners' interests and engage multiple stakeholders in the care and maintenance of the landscape

## CON

Developing a grant of conservation easement can require **considerable time and financial resources**

**Reduces potential uses** of the land beyond conservation and agricultural uses

**Requires excellent communication** between multiple stakeholders over a very long time horizon



# Preservation Easements

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FOR CERTIFIED HISTORIC STRUCTURES





# Easements for Historic Buildings

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- Legal structure same as Conservation Easements for land and sites
- Provides **strong and lasting legal protection** for historic properties
- **Enforceable legal commitment**, voluntarily made by the property owner and binding on all subsequent owners to preserve and protect the historic characteristics of the property
- Available to properties **listed on the National Register of Historic Places**, individually or as a contributing building in a historic district





# Easements for Historic Buildings

- Easement establishes activities that are:
  - **prohibited** (e.g. demolition, relocation, razing, additions within conservation area);
  - **conditional** (e.g. that are consistent with the goals and terms of the easement with the prior approval of the easement holder); and
  - **permitted** (e.g. all other rights, including exclusion, use and enjoyment).
- May include **other provisions**, including allowed land uses, public or specific visitation and access, temporary uses.





# Easements for Historic Buildings

- Easement terms define **which parts of the property are subject to the restrictions**
  - May include the interior, exterior, site, view sheds, landscape, archaeological features, artwork, etc.
- **Baseline documentation** identifies the historic significance and characteristics the contribute or do not contribute to the significance
- **Annual monitoring** and inspections



# Easement Sections and Stipulations

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## Whereas Clauses and Recitals:

- description of property,
- historic significance and designation status
- description of features and components subject to the stipulations,
- any pre-approved plans or scope of work,
- about the Grantor (property owner) and Grantee (historic preservation organization)

## Grant of Easement:

- Purpose: to assure that the Property's Conservation and Preservation Values will be retained and maintained substantially in their rehabilitated condition...
- Covenant to repair and maintain
- Prohibited activities
- Conditional rights
- Process for requests for approval
- Standards for Review
- Public Access



# Easement Sections and Stipulations

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- Reserved Rights not requiring approval
- Insurance
- Review after damage
- Indemnification; Taxes
- Administration and Enforcement
  - Notice
  - Evidence of Compliance
  - Inspections
  - Written reports
- Remedies

## Binding Effect:

- Runs with the Land
- Recording
- Extinguishment
  - Court Order
  - Condemnation
- Amendment
- Assignment

## Exhibits:

- Baseline Documentation
- Maps, legal descriptions, photographs
- Architectural drawings, specifications, permitting
- Historic property documentation
- Appraisal
- Historic Rehabilitation Tax Credit documentation





# Charitable Conservation Easement Program Integrity Act

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Pending legislation is intended to address egregious **syndicated conservation easement** transactions.

- While most easement transactions accomplish their intended public policy objectives, some promoters have used these transactions to offer investors an opportunity to **claim tax deductions in amounts that significantly exceed the amount invested**.
- These deductions are based on appraisals that greatly **inflate the value of the easement based on unreasonable conclusions about the development potential** of the property.
- Act is intended to help the IRS **to curb abusive transactions** while ensuring that this tax incentive remains available for genuine supporters in the land conservation and historic preservation communities.
- Donations of preservation easements continue to receive **scrutiny from the IRS** regardless of whether they are syndicated.
- Land Trusts and Preservation Organizations should adopt the **best practices** informed by the [Land Trust Alliance's Standards and Practices](#).

Source: <https://forum.savingplaces.org/blogs/special-contributor/2021/04/05/charitable-conservation-easement-integrity-act>

# Recommendations/Lessons Learned



- All easements should be **individually tailored** to protect the character-defining features of the historic property. Easements should **protect the entire building**, including rooflines, side and rear facades, including any ancillary or outlying structures and **any significant features of the landscape or setting**.
- **Recordkeeping** is critical, especially as easements often have provisions for approved modifications that must be documented.
- Consider the **capacity and qualifications of the easement holding organization** to ensure it has the ability to monitor and enforce provisions, with a program of responsible stewardship for its easements.
- **Communicate** clearly and regularly.





# Questions/Nīnau?

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# Contact Us!

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# Additional Resources

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Download at:

<https://www.hilt.org/community-resources>

<https://www.tpl.org/our-work/community-guide-land-conservation>

## 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."



# Mahalo to the Castle Foundation!



HAROLD K.L. CASTLE  
FOUNDATION

Easements to Protect  
Historic Properties:  
A Useful Historic Preservation Tool  
with Potential Tax Benefits



National Park Service  
Technical Preservation Services

2010

**National Park Service. “Easements to Protect Historic Properties: A Useful Historic Preservation Tool with Potential Tax Benefits” (2010).**

<https://www.nps.gov/tps/tax-incentives.htm>

**Land Trust Alliance. “Land Trust Standards and Practices: Ethical and Technical Guidelines for the Responsible Operation of a Land Trust” (2017).**

[https://s3.amazonaws.com/landtrustalliance.org/publication/files/LandTrustStandardsandPractices2017\\_0.pdf](https://s3.amazonaws.com/landtrustalliance.org/publication/files/LandTrustStandardsandPractices2017_0.pdf)



 Land Trust Alliance  
Together, conserving the places you love

Revised 2017

# 2021 PRESERVATION SEMINARS

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## **October 2021 (tentative)**

Integrating NEPA & NHPA Sec 106 Reviews for Effects on Historic and Cultural Properties

## **December 2021 (tentative)**

Guidelines for Flood Adaptation for Rehabilitating Historic Buildings





**MAHALO** FOR  
SUPPORTING THE  
PROGRAMS AND  
ACTIVITIES OF  
HISTORIC HAWAI‘I  
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# Mahalo

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