

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

January 13, 2017

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Land Board Members:

SUBJECT: APPROVAL OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE DIVISION OF FORESTRY AND WILDLIFE AND THE DEPARTMENT OF HAWAIIAN HOME LANDS FOR MANAGEMENT OF A RARE PLANT EXCLOSURE ON TAX MAP KEY (1) 8-9-008: PORTION 001, WAI'ANAE, O'AHU.

REQUEST APPROVAL OF DECLARATION OF EXEMPTION FROM CHAPTER 343, HRS ENVIRONMENTAL COMPLIANCE REQUIREMENTS FOR THE PROJECT.

REQUEST FOR DELEGATION OF AUTHORITY TO THE CHAIRPERSON TO NEGOTIATE, APPROVE, EXECUTE, AMEND AND EXTEND MEMORANDUM OF UNDERSTANDING, RIGHT-OF-ENTRY AND RELEASE OF LIABILITY AGREEMENTS, FOR DIVISION OF FORESTRY AND WILDLIFE FOR MANAGEMENT OF A RARE PLANT EXCLOSURE AT WAI'ANAE, O'AHU.

SUMMARY:

This Board Submittal requests approval in concept of Memorandum of Understanding (MOU) between the Division of Forestry and Wildlife (DOFAW) and the Department of Hawaiian Home Lands (DHHL), for management of a rare plant exclosure (Exhibit A), which is located on Hawaiian Home Lands. The Division also requests approval of a declaration of exemption from Chapter 343, HRS environmental compliance requirements, and delegation of authority to the Chairperson to negotiate, approve, execute, amend and extend MOU, Right-Of-Entries (ROE) and/or Release of Liability Agreements, as appropriate, with DHHL related to this project.

LOCATION:

Portion of Government DHHL lands situated in Wai'anae, O'ahu identified by Tax Map Key (1) 8-9-008: por. 001 (Exhibit A).

ZONING:

State Land Use District: Conservation - Subzone Resource

TRUST LAND STATUS:

Section 5(b) lands of the Hawai'i Admission Act
DHHL 30% entitlement lands pursuant to the Hawai'i State Constitution: No

TERM OF MEMORANDUM OF UNDERSTANDING:

The term of the Memorandum of Understanding shall be for a period of ten years.

CONSIDERATION:

Gratis

BACKGROUND:

In 2015, DOFAW conducted an analysis of the Nānākuli Forest Reserve (FR) boundary. This analysis revealed that a portion of TMK (1) 8-9-008:001 that was set aside as Nānākuli FR by Governor's Proclamation in 1930, was previously set aside as Hawaiian Home Land by the Hawaiian Homes Commission Act (HHCA) in 1921. This area was later withdrawn from the Forest Reserve System by Executive Order 3270 in 1984, and is under the jurisdiction of DHHL.

Due to an error in DOFAW's records, the area was presumed to still be under DOFAW's jurisdiction when a 0.00371 acre rare plant enclosure was constructed in 2011 to protect the last remaining na'u (*Gardenia brighamii*) growing in the wild on O'ahu (Exhibit A). The enclosure was built by the Plant Extinction Prevention Program (PEPP), with the help of several agencies including DOFAW, Board of Water Supply, O'ahu Army Natural Resources Program, and Ka'ala Farms. PEPP is the primary program that manages the enclosure and the federally protected wild na'u within the fence. Ongoing management actions include weed control, na'u fruit and vegetative collections, fence maintenance, and outplanting. If long term access can be secured, future management actions may include outplanting of propagated na'u within the enclosure.

DISCUSSION:

In January 2015, DOFAW contacted DHHL Land Branch to initiate discussion concerning the management of the rare plant enclosure in question. DHHL has expressed support for entering into an agreement that would allow the continued management of the na'u enclosure by DOFAW, stating that DLNR is better equipped to manage this rare resource. Both agencies agreed that a Memorandum of Understanding is the best option to allow for continued management of this federally protected endangered species.

DOFAW is interested in entering into a Memorandum of Understanding with DHHL for the term of 10 years for the continued management of the rare plant enclosure in Nānākuli to allow PEPP to maintain and monitor the enclosure protecting the last wild na'u individual. These activities

will serve to protect the last remaining wild population and provide a potential outplanting site for more na‘u in the future.

DOFAW is requesting permission to access the endangered species plant enclosure to conduct fence maintenance, weed control, collect rare plant material, and conduct future outplanting of na‘u. In exchange, PEPP in conjunction with DOFAW will provide management for endangered species on DHHL land.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

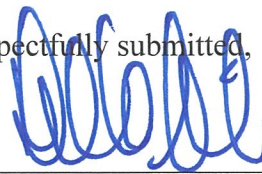
In accordance with “Exemption List for the Department of Land and Natural Resources, reviewed and concurred upon by the Environmental Council on June 5, 2015,” the proposed activities are exempt from the preparation of an environmental assessment. Specifically, the proposed activities fall under Exemption Class No. 1 Item 5, Item 7, and Item 33. Refer to attached Exemption Notification labeled Exhibit B.

RECOMMENDATIONS:

That the Board:

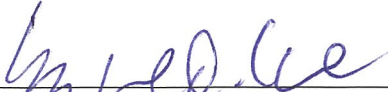
1. Approve a Memorandum of Understanding between the State of Hawai‘i Division of Forestry and Wildlife and the Department of Hawaiian Home Lands for management of a rare plant enclosure at Wai‘anae, O‘ahu, Tax Map Key: (1) 8-9-008: portion 001.
2. Declare that, after considering the potential effects of the proposed dispositions provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will likely have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
3. Delegate to the Chairperson the authority to negotiate, approve, execute, amend and extend Memorandum of Understanding, Right-Of-Entries and Release of Liability Agreements, as appropriate, between the State of Hawai‘i Division of Forestry and Wildlife and the Department of Hawaiian Home Lands for management of rare plant enclosure at Wai‘anae, O‘ahu, Tax Map Key: (1) 8-9-008: portion 001, subject to:
 - a. Review and approval as to form by the Department of the Attorney General; and
 - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



David G. Smith,
Administrator

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

Rare Plant Exclosure on DHHL land in Nanakuli

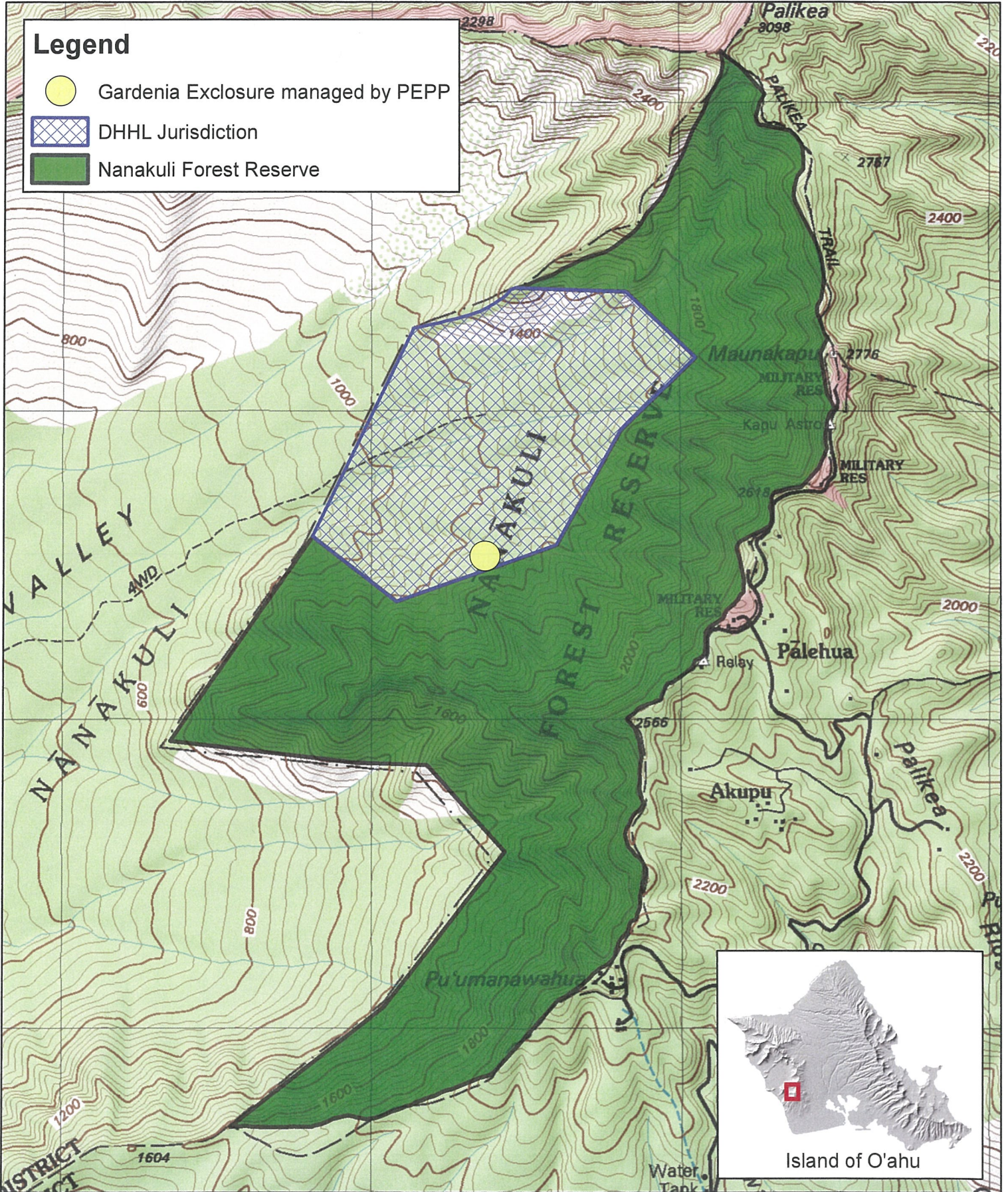


Exhibit B

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

KEKOA KALUHIWA
FIRST DEPUTY


JEFFREY T. PEARSON
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes.

Project Title:	Management of a rare plant enclosure for <i>Gardenia brighamii</i> in Wai‘anae, O‘ahu, Tax Map Key (1) 8-9-008: portion 001.
Project Number:	N/A
Project Description:	DOFAW is requesting permission to access a 0.00371 acre (160 square foot) rare plant enclosure on Hawaiian Home Land in Nānākuli Valley. The enclosure was constructed to protect the last remaining <i>Gardenia brighamii</i> growing in the wild on O‘ahu. The area is surrounded by predominately non-native forest with some native species. DOFAW seeks to conduct fence maintenance, control and remove guinea grass, collect rare plant material, and conduct future outplanting within the enclosure.
Chapter 343 Trigger:	Use of State Land and Funds
Exemption Class & Description	Exemption Class No. 1 Item 5, “Rescue of threatened or endangered species.” Exemption Class No. 1 Item 7, “Operation, repair and maintenance of existing Department structures and facilities, including baseyards, offices, cabins, sheds, and fencing.” Exemption Class No. 1 Item 33, “Maintenance of state lands and waters to remove weeds, brushes, grass and other unwanted vegetation.”
Recommendation	It is anticipated that this project will have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.


Suzanne D. Case, Chairperson

12/21/16
Date