

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife

February 9, 2018

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Land Board Members:

SUBJECT: REQUEST APPROVAL OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE TO COOPERATIVELY WORK TO CONSERVE NATURAL AND CULTURAL RESOURCES AND ECOSYSTEMS

BACKGROUND AND DISCUSSION:

This board submittal requests approval of a Memorandum of Understanding (MOU) to establish the procedures, standards, terms, and conditions under which the National Park Service and the Department of Land and Natural Resources will work cooperatively to conserve natural and cultural resources and ecosystems (Exhibit A). Effective management of public trust resources requires that managers are able to cooperate with partners to maximize effectiveness of limited conservation funds and to respond quickly to ongoing and emergent threats. Conservation work may include, but is not limited to, control of invasive species, monitoring native and non-native plants and animals, research, and other such work. The Memorandum of Understanding will allow for the State of Hawaii Department of Land and Natural Resources or the United States Department of the Interior National Park Service to request assistance from each other, share resources, and enhance effective conservation of natural and cultural resources and ecosystems without incurring expenses to the responsible agency.

The Memorandum of Understanding will include conservation work under this agreement among Haleakalā National Park, World War II Valor in the Pacific National Monument, Honouliuli National Monument, Pu'ukoholā Heiau National Historic Site, Ala Kahakai National Historic Trail, Pu'uuhonua o Hōnaunau National Historic Park, Kaloko Honokōhau National Historic Park, Hawai'i Volcanoes National Park and the Department and its divisions including, but not limited to, the Division of Forestry and Wildlife, Division of Aquatic Resources, Land Division, State Parks, and the State Historic Preservation Division, as applicable. The Division of Forestry and Wildlife has consulted with each of these Divisions regarding this MOU and incorporated their feedback, if any. The National Park Service and the Department of the Attorney General have reviewed this MOU and approve of its content.

CHAPTER 343 – ENVIRONMENTAL IMPACT STATEMENTS


This action before the Board is merely an agreement to work collaboratively and does not constitute a use of State lands or funds, and therefore, this action does not trigger the provisions of Chapter 343, Hawaii Revised Statutes (HRS), relating to environmental impact statements. Inasmuch as the Chapter 343, HRS, environmental requirements apply to parties use of the land, the parties shall be responsible for compliance with Chapter 343, HRS, as may be amended.

RECOMMENDATIONS:

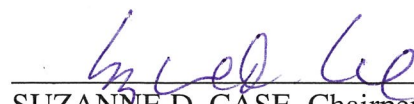
That the Board of Land and Natural Resources

1. Approve a Memorandum of Understanding between the State of Hawaii Department of Land and Natural Resources and the United States Department of the Interior National Park Service; and
2. Authorize the Chairperson to amend, finalize, and execute the Memorandum of Understanding subject to approval as to form by the Department of the Attorney General.

Respectfully submitted,

  
\_\_\_\_\_  
DAVID G. SMITH, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:

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

**MEMORANDUM OF UNDERSTANDING  
NATURAL AND CULTURAL RESOURCES CONSERVATION**

Agreement Number \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE UNITED STATES DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE  
AND THE  
STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

This Memorandum of Understanding (hereinafter "Agreement") is entered into by and between the National Park Service (hereinafter "NPS"), United States Department of the Interior, acting through the Superintendents of Haleakalā National Park, World War II Valor in the Pacific National Monument, Honouliuli National Monument, Pu'ukoholā Heiau National Historic Site, Ala Kahakai National Historic Trail, Pu'uhonua o Hōnaunau National Historic Park, Kaloko Honokōhau National Historic Park, and Hawai'i Volcanoes National Park and the State of Hawai'i, Department of Land and Natural Resources (hereinafter "DLNR"), by its Board of Land and Natural Resources, acting through its Chairperson (each and all hereinafter known as "Party" and/or "Parties").

**ARTICLE I - BACKGROUND AND OBJECTIVES**

The objective of this Agreement is to establish the standards, terms, and conditions under which the NPS and DLNR will cooperatively work to conserve natural and cultural resources, and ecosystems. Conservation work can include, but is not limited to, control of invasive species, monitoring native and non-native plants and animals, research, and other such work. Specific examples of such conservation work include, but are not limited to: conducting field surveys for monitoring native and non-native species, removing invasive plant species utilizing hand tools and approved herbicides, removing invasive animals using approved methods and equipment, capturing and banding animals using approved methods and equipment, and assisting with cultural resource or historic preservation protection and stabilization (e.g. repairing historic walls or features, clearing of invasive and destructive alien and non-sensitive plants, etc.). Work under this agreement is among Haleakalā National Park, World War II Valor in the Pacific National Monument, Honouliuli National Monument, Pu'ukoholā Heiau National Historic Site, Ala Kahakai National Historic Trail, Pu'uhonua o Hōnaunau National Historic Park, Kaloko Honokōhau National Historic Park, Hawai'i Volcanoes National Park and DLNR and its divisions including, but not limited to, the Division of Forestry and Wildlife, Division of Aquatic Resources, Land Division, State Parks, and the State Historic Preservation Division, as applicable.

This Agreement provides for cooperation among the above-mentioned signatories and their employees, and, as provided by specific agreement, their contractors. This cooperation benefits not only the Parties, but the public.

**ARTICLE II - AUTHORITY**

**MEMORANDUM OF UNDERSTANDING  
NATURAL AND CULTURAL RESOURCES CONSERVATION**

Agreement Number \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_

The Parties which are units of the National Park Service enter into the Agreement through the authority of the Organic Act, formerly known as 16 U.S.C. 1-4 et seq. Honouiluli National Monument is authorized to enter into this Agreement by Proclamation No. 9234, 80 FR 11067, (Feb. 24, 2015) and Ala Kahakai National Historic Trail is authorized to enter into this Agreement by the Ala Kahakai National Historic Trail Act, Pub. L. No. 106-509, 114 Stat. 2361. DLNR, by the Board of Land and Natural Resources, is authorized to enter into this agreement pursuant to Hawaii Revised Statutes § 171-6.

**ARTICLE III – STATEMENT OF WORK**

1. The Parties may:

1. Allow each other access to lands owned, managed or under the jurisdiction of the other, subject to any required approvals, including, but not limited to those required in B.1. below.
2. Allow each other to conduct work, for the purpose of conserving natural and cultural resources on such lands, using tools and equipment owned by the other, subject to the ownership, loan and use provisions of each.
3. Allow each other to ride as passengers in vehicles owned/operated/contracted by the other for the purposes of transporting personnel and equipment from site to site. Transport by vehicles other than passenger vehicles, such as boats and aircraft, requires specific authorization according to the Parties' respective policies and is not covered under this Agreement.
4. Allow each other to temporarily store vehicles, supplies and/or equipment in designated locations within lands owned, managed or under the jurisdiction of the other, with advance written permission from the other.
5. Subject to any relevant laws or regulations regarding privacy or intellectual property, provide any relevant data, as appropriate, to each another to jointly conduct such conservation and/or cultural resources preservation work.
6. Allow each other to temporarily use facilities, such as cabins or shelters, in designated locations within parks, with advance written permission from the park.

2. The Parties will:

1. Provide notice in advance of any proposed or planned work occurring within, or requiring access through, lands or waters of the other agency's jurisdictional boundaries and seek review and written approval from the other agency in advance of conducting such work, including, but not limited to, applying for and obtaining any necessary permits or legal authorizations.

**MEMORANDUM OF UNDERSTANDING  
NATURAL AND CULTURAL RESOURCES CONSERVATION**

Agreement Number \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_

2. Maintain each agency's own policies and procedures for human resource, safety and liability. Work under their own agency standards while conducting work on lands owned by or under the jurisdiction of the other, or while conducting work led by the other, regardless of location. In the event that standards conflict with either agency's own requirements, identify and agree upon appropriate procedures prior to conducting any work, and with such agreement in writing prior to the commencement of any such work.
3. Ensure that all necessary state and federal compliance is completed prior to conducting any ground-disturbing work. Ensure that any prescribed mitigation actions for any specific undertaking are implemented and adhered to. A copy of completed compliance documentation and any relevant determination(s) will be provided to the other Part(ies) as applicable.
4. Consult and communicate with each other openly and often, including a joint annual review of the MOU to ensure the agreement remains effective and objectives are being met.

**ARTICLE IV – TERM OF AGREEMENT**

This Agreement will be effective for a period of ten years from the date of final signature, unless it is terminated earlier by one of the Parties pursuant to Article VI.

**ARTICLE V – KEY OFFICIALS**

A. Key officials are essential to ensure maximum coordination and communication between the Parties and the work being performed. They are:

1. **For the NPS:**  
**[Technical Representative or designated NPS contact]:**

Steve Robertson, Chief of Resource Management  
Haleakalā National Park  
P.O. Box 369  
E-mail: Steve\_Robertson@nps.gov  
Telephone: (808) 572-4490  
Facsimile: (808) 572- 4498

2. **For the DLNR:**  
**[Chairperson of the Board of Land and Natural Resources or Division Administrator]:**

Suzanne D. Case  
Department of Land and Natural Resources

**MEMORANDUM OF UNDERSTANDING  
NATURAL AND CULTURAL RESOURCES CONSERVATION**

Agreement Number \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_

1151 Punchbowl Street  
Honolulu, HI 96813  
E-mail: [Suzanne.D.Case@hawaii.gov](mailto:Suzanne.D.Case@hawaii.gov)  
Telephone: (808) 587-0400

David G. Smith  
Division of Forestry and Wildlife  
1151 Punchbowl Street, Room 325  
Honolulu, HI 96813  
Email: [David.G.Smith@hawaii.gov](mailto:David.G.Smith@hawaii.gov)  
Telephone: (808) 587-0166

Bruce Anderson  
Division of Aquatic Resources  
1151 Punchbowl Street, Room 330  
Honolulu, HI 96813  
Email: [Bruce.S.Anderson@hawaii.gov](mailto:Bruce.S.Anderson@hawaii.gov)  
Telephone: (808) 587-0100

Russell Tsuji  
Land Division  
1151 Punchbowl Street, Room 20  
Honolulu, HI 96813  
Email: [Russell.Y.Tsuji@hawaii.gov](mailto:Russell.Y.Tsuji@hawaii.gov)  
Telephone: (808) 587-0419

Curt Cottrell  
Division of State Parks  
1151 Punchbowl Street, Room 3  
Honolulu, HI 96813  
Email: [Curt.A.Cottrell@hawaii.gov](mailto:Curt.A.Cottrell@hawaii.gov)  
Telephone: (808) 587-0300

Alan Downer  
State Historic Preservation Division  
601 Kaokila Blvd, Suite 555  
Kapolei, HI 96707  
Email: [Alan.S.Downer@hawaii.gov](mailto:Alan.S.Downer@hawaii.gov)  
Telephone: (808) 692-8015

- B. Communications** - The Parties will address any communication regarding this Agreement to the Points of Contact with a copy to the superintendent of each park area, or the district manager of each island, affected by any project or activity. Communications that relate solely

**MEMORANDUM OF UNDERSTANDING  
NATURAL AND CULTURAL RESOURCES CONSERVATION**

Agreement Number \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_

to routine operational matters described in the current work plan may be sent only to the superintendent.

**ARTICLE VI – MODIFICATION AND TERMINATION**

- A. This Agreement may be modified only by a written instrument executed by the Parties.
1. A Party may terminate this Agreement by providing the other Parties with thirty (30) days advance written notice. In the event that one Party provides the other Parties with notice of its intention to terminate, the Parties will meet promptly to discuss the reasons for the notice and to try to resolve their differences.
  2. For NPS, one Party may pursue termination of this Agreement individually and separately of the other Parties as needed, following the procedures identified in this Article VI(B). In the event one NPS Party terminates, this Agreement shall remain in force for the remaining Parties.

**ARTICLE VII – FUNDING**

- A. Each Party agrees to provide for the costs, personnel, services, and equipment necessary to complete the scope of work described under Article III for projects within its own jurisdiction. No funding or equipment will be exchanged between the Parties to complete the scope of work.
- B. This Agreement is in no way a commitment of any funds by any Party.

**ARTICLE VIII – LIABILITY**

- A. The Parties agree:
1. To carry adequate insurance to carry out the responsibilities set forth in this Agreement or to be self-insured.
  2. Subject to the requirements and limitations of each Party's laws and regulations, to cooperate with each other in the investigation and defense of any claims that may be filed with each, arising out of the activities of the other, its agents, contractors, and employees.

**ARTICLE IX – GENERAL PROVISIONS**

- A. Non-Discrimination – All activities pursuant to this Agreement shall be in compliance with the requirements of *Executive Order 11246*, as amended; *Title VI of the Civil Rights Act of 1964*, as amended (78 Stat. 252; 42 U.S.C. §§2000d et seq.); *Title V, Section 504 of the Rehabilitation Act of 1973*, as amended, (87 Stat. 394; 29 U.S.C. §794); the *Age Discrimination Act of 1975* (89 Stat. 728; 42 U.S.C. §§6101g seq.); and with all other federal

**MEMORANDUM OF UNDERSTANDING  
NATURAL AND CULTURAL RESOURCES CONSERVATION**

Agreement Number \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_

laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.

- B. Lobbying Prohibition – 18 U.S.C. §1913, Lobbying with Appropriated Moneys, as amended by *Public Law 107-273*, Nov. 2, 2002 - No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication where prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.
- C. Anti-Deficiency Act – 31 U.S.C. §1341 - Nothing contained in this Agreement shall be construed as binding the NPS to expending in any one fiscal year any sum in excess of appropriations made by Congress for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriation.
- D. Publications and Reports – No Party will unilaterally publish a joint publication without consulting the other Parties. This restriction does not apply to popular publication of previously published technical matter. Publications pursuant to this Agreement may be produced independently or in collaboration with others; however, in all cases proper credit will be given to the efforts of those parties contribution to the publication.
- E. Endorsements – No Party will publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, pictures, still and motion pictures, articles, manuscripts or other publications) which states or implies the other Parties' endorsement of a product, service, or position related to this Agreement or otherwise without prior written approval.
- F. Communications – Each Party will obtain prior approval for any public information release which refers to the other Parties, their employees, agents, and/or contractors in connection with this Agreement. The specific text, layout, photographs, etc., of the proposed release will be submitted for approval to Key Officials identified in Article V. Neither party will use the other party's logos, emblems, or other intellectual property or Copyright material without prior approval.



**MEMORANDUM OF UNDERSTANDING  
NATURAL AND CULTURAL RESOURCES CONSERVATION**

Agreement Number \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_

1. No Party will reveal locations of any biological, archeological, or cultural resources within the other Party's jurisdiction in any publically released products or materials unless granted written permission from the other Party, and will not retain this location information past the time necessary to complete project work, subject to applicable state and federal laws.
2. No Party will reveal any statutorily protected information (e.g., by the National Parks Service Omnibus Management Act of 1998) regarding the location of threatened or endangered species within the other Party's jurisdiction in any publically released products or materials unless granted written permission by the other Party, and will not retain any this location information past the time necessary to complete project work, subject to applicable state and federal laws.
3. No Party will release any statutorily protected information concerning resources within the other Party's jurisdiction protected under statutes or regulations governing release of information to third parties (e.g. Freedom of Information Act) unless granted written permission by the other Party, and will not retain any this location information past the time necessary to complete project work.

**MEMORANDUM OF UNDERSTANDING  
NATURAL AND CULTURAL RESOURCES CONSERVATION**

Agreement Number \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_

**ARTICLE VII – SIGNATURES**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date(s) set forth below.

**FOR THE NATIONAL PARK SERVICE:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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**MEMORANDUM OF UNDERSTANDING  
NATURAL AND CULTURAL RESOURCES CONSERVATION**

Agreement Number \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_

Signature: \_\_\_\_\_

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**MEMORANDUM OF UNDERSTANDING  
NATURAL AND CULTURAL RESOURCES CONSERVATION**

Agreement Number \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_

**FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES:**

Approved by the Board of Land and Natural Resources on: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: Suzanne D. Case

Title: Chairperson, Board of Land and Natural Resources

Date: \_\_\_\_\_

DRAFT