

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, HI, 96813

July 26, 2019

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

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL OF A MEMORANDUM OF AGREEMENT BETWEEN THE HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES/DIVISION OF FORESTRY AND WILDLIFE, UNITED STATES FISH AND WILDLIFE SERVICE, UNITED STATES COAST GUARD, ISLAND CONSERVATION, AND THE NATIONAL TROPICAL BOTANICAL GARDENS, REGARDING THE LEHUA ISLAND ECOSYSTEM RESTORATION PROJECT

SUMMARY:

Submitted for your consideration and approval is a draft Memorandum of Agreement (MOA) between the Hawaii Department of Land and Natural Resources (DLNR), United States Fish and Wildlife Service (USFWS), United States Coast Guard (USCG), Island Conservation (IC), and the National Tropical Botanical Garden (NTBG), regarding the Lehua Island Ecosystem Restoration Project (LIERP). The MOA proposes to continue ongoing efforts to monitor and eradicate rats from the island of Lehua, and continue restoration efforts to improve the Lehua Island Seabird Sanctuary's suitability as habitat for seabirds, native plants, and other native species.

BACKGROUND:

The island of Lehua is situated just north of Niihau and is approximately 115 hectares in size. It was set aside as a lighthouse site under the control of the Department of Commerce in a proclamation dated August 10, 1928. The island is designated as a State Seabird Sanctuary and DLNR's Division of Forestry and Wildlife is responsible for the management of state seabird sanctuaries, and is a trustee for seabirds and other native plant and wildlife resources on such sanctuaries. Ecosystem restoration efforts began on Lehua in 2005. In 2006, introduced rabbits, which had significantly impacted the vegetation on Lehua, were eradicated. Free from rabbits, the vegetation on Lehua began to come back, but the seabirds were still being heavily impacted by non-native predators, namely Polynesian rats (*Rattus exulans*). In 2009, an attempt was made to eradicate rats from the island, but the initial attempt did not completely remove the rats and the rat population rebounded. In 2012 a feasibility assessment was conducted by Island

Conservation regarding attempting a second eradication effort on Lehua. For that effort, IC reached out to DOFAW, the other Parties of this MOA, and the owners of Niihau, who eventually came to meet on a regular basis and formed the Lehua Project Steering Committee (LPSC). The LPSC determined that a second attempt to eradicate rats from Lehua was feasible and should be implemented. Following lessons learned from the 2009 attempt, the operation was planned for the dry season in late summer. During August-September 2017 members of the LPSC collaborated to carry out a second rat eradication attempt. Post-eradication monitoring of Lehua revealed that the population of rats had been significantly reduced but individual rats remained. Members of the LPSC pulled together the staff and resources to significantly increase monitoring efforts and implement eradication spot-treatments where rats were discovered. The LPSC has continued these monitoring and treatment efforts and is committed to completing the rat eradication.

The efforts described in this MOA are in large part already being carried out by the members of the LPSC. This Agreement enshrines those efforts in a document to formally set out the cooperative efforts of the Parties.

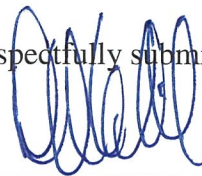
The draft MOA presented for approval describes the process by which these Parties will jointly plan for and implement the continued restoration of Lehua.

RECOMMENDATION:

The Department recommends that the Board:

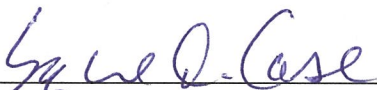
1. Authorize the Chairperson of the Board of Land and Natural Resources to negotiate, approve and sign a Memorandum of Agreement, pending review and edits by the Department of the Attorney General and the other parties, allowing agency staff to continue the monitoring and restoration efforts on Lehua.

Respectfully submitted,



David G. Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



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

Attachment: DRAFT Lehua MOA

**MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF LAND AND NATURAL RESOURCES, THE U.S. FISH AND
WILDLIFE SERVICE, UNITED STATES COAST GUARD, ISLAND CONSERVATION
AND THE NATIONAL TROPICAL BOTANICAL GARDEN**

THIS MEMORANDUM OF AGREEMENT (“Agreement”) is made and entered into by and among the State of Hawaii Department of Land and Natural Resources, the United States Fish and Wildlife Service, United States Coast Guard, Island Conservation, and the National Tropical Botanical Garden, hereinafter referred to collectively in whole or in part as the “Parties”.

RECITALS

- A. The island of Lehua is situated north of Niihau in the main Hawaiian Islands, and is approximately 115 hectares in size. The island is owned by the United States Coast Guard (USCG) as a navigational light tower site, and licensed to the Department of Land and Natural Resources (DLNR) for use as a state seabird sanctuary. DLNR’s Division of Forestry and Wildlife (DOFAW) is responsible for the management of state seabird sanctuaries, and is a trustee for seabirds and other native plant and wildlife resources on such sanctuaries.
- B. On November 8, 2005, the USCG, authorized the United States Fish and Wildlife Service (USFWS) to conduct an ecosystem restoration program on Lehua through December 31, 2008. On April 14, 2007, DLNR and USCG entered into a license agreement for use of Lehua to conduct ecosystem restoration activities. On January 1, 2014, DLNR and USCG renewed the above license to continue the restoration activities until December 31, 2018. The license was renewed again effective January 1, 2019 and will continue until December 31, 2023 as license number HSCG89-19-6-0012.
- C. The Parties collaborated and carried out a program to eradicate rabbits from Lehua, and a subsequent effort to eradicate rats from the island. The Lehua Island Ecosystem Restoration Project (LIERP) is now focusing on completion of the rat eradication effort and ecosystem restoration activities relating to the management of the island as a state seabird sanctuary.
- D. The Parties now are entering into this Agreement to memorialize their understanding of their roles relative to the restoration of native habitat and its native wildlife, and their respective roles in assisting with such efforts.

AGREEMENT

Now, therefore, in consideration of the foregoing recitals, the respective promises of the Parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Term.** This Agreement is effective as of the last date Parties have signed below and shall expire on December 31, 2023, unless sooner terminated as provided below or extended by a subsequent modification to this Agreement which is entered into by the Parties. Any party may elect to terminate their involvement in this Agreement at any time, with or without cause, upon not less than 60 days written notice which is given to all of the other Parties in the manner called for in this Agreement.
2. **Project.** The current phase of the LIERP is to monitor Lehua Island for the presence or absence of rats following the eradication effort conducted in August-September 2017. Should rats be detected, follow-up actions to plan and implement completion of the eradication will be undertaken. Other activities include native plant restoration, and monitoring of native seabird recovery.

Responsibilities of the Parties. The respective roles of the Parties pursuant to this Agreement in carrying out the Project shall be as follows (all items, for all Parties, contingent on funding availability and organizational capacity):

(a) **DLNR/DOFAW**

- Lead agency to assure that all necessary state and federal environmental compliance requirements are met, and restoration activities are undertaken.
- Provide logistical and material support for monitoring, rodent eradication and restoration efforts.
- Administer the Lehua Project Steering Committee.
- Collaborate with the other Parties on ecosystem restoration planning and implementation.

(b) **USFWS**

- Coordinate federal and state environmental compliance processes, as needed.
- Interact on behalf of the project with other Federal agencies, as appropriate.
- Assist with ecosystem restoration activities.

(c) **USCG**

- Work with the Parties to facilitate access for use of Lehua Island for conservation purposes.

(d) **IC**

- Assist the Parties with environmental compliance, and ecosystem restoration planning and implementation.

(e) **NTBG**

- Collaborate with the other Parties to provide technical assistance to the project.

(f) Joint Responsibilities. All of the Parties shall share the following responsibilities and duties with respect to the project:

- (1) Given staff availability, each party shall have at least one representative present and authorized to speak for such Party at each meeting of the Lehua Project Steering Committee, which is held for the purpose of carrying out the Project, and shall use its reasonable best efforts to send such a representative to other meetings that may be called for such purposes at other times. Members of the Lehua Project Steering Committee are not limited to the Parties. Membership includes the owners of Niihau, and others as agreed upon by the Parties.
- (2) All Parties entering onto Lehua Island will comply with the Lehua Island access and biosecurity protocols and procedures.

3. Notices. All notices and demands of any kind which any Party may be required to or may desire to serve on another Party in connection with this Agreement shall be in writing at the following addresses:

Department of Land and Natural Resources
DOFAW Administrator
1151 Punchbowl Street, Room 325
Honolulu, Hawaii 96813

U.S. Fish and Wildlife Service
Pacific Island Fish and Wildlife Office
Field Supervisor
300 Ala Moana Blvd. Rm. 3-122
Honolulu, HI 96850

United States Coast Guard
Civil Engineering Unit Honolulu
Commanding Officer
300 Ala Moana Blvd
Suite 8-134
Honolulu, HI 96850

Island Conservation
Chief Operating Officer
2100 Delaware Ave.
Santa Cruz, CA 95060

National Tropical Botanical Garden
Director and CEO
3530 Papalina road
Kalaheo Hi 96841

4. **Agreement.** The terms of this Agreement are intended by the Parties as a final expression of their agreement with respect to the subject matter hereof, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement constitute the complete and exclusive statement of its terms, and that no extrinsic evidence of any kind which contradicts the terms of this Agreement may be introduced in any proceedings (judicial or otherwise) involving this Agreement, except for evidence of subsequent written amendment to this Agreement. This Agreement may not be modified, amended or otherwise changed in any manner, except by a written amendment executed by all of the Parties hereto, or their successors in interest.
5. **Counterpart Signatures.** This agreement may be executed in multiple counterparts, and each executed counterpart of this Agreement shall be deemed an original for all purposes, despite the fact that not all of the Parties are signatories to the same counterpart. For all purposes, including without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.
6. **Interpretation.** In this Agreement, personal pronouns shall be construed as though of the gender and number required by the context, the singular including the plural, the plural including the singular, and each gender including other genders, all as may be required by the context. Any and all recitals at the beginning of this Agreement are accurate and shall constitute an integral part of this Agreement, and this Agreement shall be construed in light of those recitals. Any and all exhibits, schedules, and addenda attached to and referred to in this Agreement are hereby incorporated into this Agreement as fully as if set out in their entirety herein. The headings of the various paragraphs of this Agreement are intended solely for reference purposes and are not intended for any purpose to modify, explain, or place any construction on any of the provisions of this Agreement. The Parties acknowledge that each Party and its counsel have reviewed, revised (where it was deemed appropriate), and approved this Agreement, and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Agreement. This Agreement shall be governed by, construed in accordance with, and interpreted under, the internal law of the State of Hawaii, except to the extent that federal law governs.
7. **Responsibility for Personnel.** Except to the extent (if any) otherwise explicitly stated in this Agreement, each Party shall retain all responsibility for its own employees, agents, and invitees, which shall include (but not necessarily be limited to) full responsibility for: (i) any and all payments due to its employees or agents, whether denominated as salaries, stipends, contract payments, or otherwise; (ii) any and all applicable health care coverage, worker's compensation insurance, other insurance, and other benefits for such employees or agents; and (iii) any and all travel, expense, or other reimbursements due to such employees or agents.
8. **Indemnification.** Each Party shall be responsible for damage or personal injury resulting from the acts or omissions of its own employees, agents, or invitees while acting within the scope of their employment, agency, or invitation.

The State of Hawaii (DLNR/DOFAW) shall be responsible for damage or personal injury resulting from the acts or omissions of state employees while acting within the scope of their employment to the extent that the State's liability for such damage or injury has been determined by a court or otherwise agreed to by the State. The State shall pay for such damages and injury to the extent that funds have been authorized and appropriated by the Legislature for such purpose, and the funds have been allocated by the executive budget process.

All Parties understand that the landscape of Lehua has inherent natural hazards which include but are not limited to steep slopes, crumbling rock, stinging insects, thorny plants, and wild animals. All Parties who enter onto the island are aware of these risks and any injuries sustained from these natural hazards are the responsibility of the Parties themselves and not the landowners or managers of these lands.

9. **No Agency or Third-Party Beneficiaries.** No person or entity not a Party to this Agreement shall have any rights under this Agreement, whether as an alleged third-party beneficiary or otherwise. No partnership, joint venture, or agency is intended to be, nor shall it be, established by this Agreement, and no Party to this Agreement, or to transact business or incur obligations in the name of any such other Party or for the account of such other Party, and no Party to this Agreement shall be in any manner or to any extent bound by or responsible for any acts, representations, or conduct of any other Party, to this Agreement, except to the extent (if any) explicitly set out in this Agreement.
10. **No Commitments Beyond Agreement.** The Parties acknowledge and agree that nothing in this Agreement shall obligate any of the Parties to expend or provide funds or staffing, or to take any other actions, beyond those which are explicitly called for in this Agreement, and that any additional funding, staffing, or other obligations of a Party in furtherance of the goals of the Project may be created only pursuant to a written amendment to this Agreement which is signed by all affected Parties, or by means of a further written agreement entered into by the affected Parties in implementing the Project.

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RECOMMEND APPROVAL:

Approved by the Board of Land and Natural
Resources at its meeting on:

_____.

Date

**STATE OF HAWAII, BOARD OF
LAND AND NATURAL RESOURCES
(for DEPARTMENT OF LAND AND
NATURAL RESOURCES)**

ISLAND CONSERVATION

By: _____

By: _____

Date _____

Date _____

Approved as to form:

**NATIONAL TROPICAL BOTANICAL
GARDENS**

Deputy Attorney General

By: _____

**UNITED STATES FISH AND
WILDLIFE SERVICE, PACIFIC
ISLANDS FISH AND WILDLIFE
OFFICE**

Date _____

By: _____

Date _____

UNITED STATES COAST GUARD

By: _____
