

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

October 11, 2019

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

Land Board Members:

SUBJECT: REQUEST APPROVAL TO ENTER INTO A MEMORANDUM OF UNDERSTANDING BETWEEN PACIFIC RIM CONSERVATION, INC., AND THE DEPARTMENT OF LAND AND NATURAL RESOURCES, DIVISION OF FORESTRY AND WILDLIFE TO ENGAGE AS PARTNERS IN A COOPERATIVE EFFORT TO SUPPORT HABITAT RESTORATION, NATURAL RESOURCE PROTECTION, AND PREDATOR EXCLUSION FENCE CONSTRUCTION, TMK (4) 5-9:001:001, KAUA'I

AND

REQUEST APPROVAL OF DECLARATION OF EXEMPTION TO CHAPTER 343, HRS, ENVIRONMENTAL COMPLIANCE REQUIREMENTS FOR THIS PROJECT.

SUMMARY:

The purpose of this Memorandum of Understanding (MOU) is to establish a partnership framework for cooperation between Pacific Rim Conservation, Inc. and the Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW) on activities that involve cooperative effort to support habitat restoration, natural resource protection, and predator exclusion fence construction. The assistance provided through this MOU enables Pacific Rim Conservation, Inc. to construct predator exclusion fences and conduct associated natural resource management actions in the Na Pali Kona Forest Reserve and the Hono o Na Pali Natural Area Reserve. The conservation activities supported by Pacific Rim Conservation, Inc. address the following resource concerns:

- Newell's Shearwater and Hawaiian Petrel Management
- Native Plant Management
- Soil Quality Degradation
- Inadequate Habitat for Fish, Wildlife, and Invertebrates
- Climate Change

BACKGROUND:

Pacific Rim Conservation, Inc. is a 501(c)(3) non-profit foundation whose mission is to maintain and restore native bird diversity, populations, and habitats in Hawaii and across the Pacific region.

In May 2019, Pacific Rim Conservation, Inc. submitted a request to the National Fish and Wildlife Foundation to address priority natural resource concerns in the island of Kauai. Following the award of funds, DOFAW staff are working with Pacific Rim Conservation, Inc. to develop partnership agreements.

DOFAW now seeks BLNR approval to delegate authority to the Chair to execute and sign an MOU, which will allow work to be conducted on state lands.

DISCUSSION:

By signing the MOU, Pacific Rim Conservation can move forward with the construction of predator proof fences and associated habitat management, such as seabird monitoring and predator removal. As the Lead Partner, DLNR-DOFAW is responsible for securing all necessary permits for construction of both fences, and conducting botanical surveys of both fencelines to ensure threatened and endangered plants are not present in the immediate path of the fenceline.

The use of predator fencing greatly increases the effectiveness of existing animal control efforts. Predator fencing makes it feasible to remove all animals from within the fenced unit and to focus control efforts on buffer areas around the perimeter of the fence. In Hawai'i, the use of predator fencing is especially promising because it can provide areas within which the entire ecosystem, including native vegetation, can recover.

Newell's Shearwaters (*Puffinus auricularis newelli*) and Hawaiian Petrels (*Pterodroma sandwichensis*) are listed under the endangered species act and are Hawaii's only endemic seabirds. They are both declining due to habitat degradation by feral ungulates (pigs, goats) and invasive exotic plants, predation by feral cats, rats, mongooses, and introduced Barn Owls, and collisions with power lines and light attraction. Protection of shearwaters on their nesting grounds, and reduction of collision and lighting hazards are high priority recovery actions for these species. One of the most effective ways to protect nesting grounds is to exclude predators from entering the area with fencing and subsequent mammalian predator removal.

Due to the remoteness and dense vegetation in the seabird breeding areas, a network of small predator proof fence (each less than 11 acres) are planned for construction. Their small size will improve chances of successful eradication of predators. These seabirds can nest at high densities, so the small areas have the potential to provide habitat for large populations. Currently, only the Honopu and Pohakea fences are funded. In the future, additional fences may be installed by DLNR, Pacific Rim Conservation, Inc., or another partner, if funding permits.

CHAPTER 343, HAWAII REVISED STATUTES – ENVIRONMENTAL ASSESSMENT:

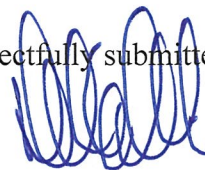
In accordance with the requirements of Chapter 343, HRS, and Chapter 11-200-8(6), Hawaii Administrative Rules (HAR), the Exemption List for the Department of Land and Natural Resources, as reviewed and concurred upon by the Environmental Council on June 5, 2015, the subject project is exempt from the preparation of an environmental assessment pursuant to the exemption classes listed in Exhibit 1.

RECOMMENDATION:

That the Board:


1. Declare that, after considering the potential effects of the proposed project as 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.
2. Approve a Memorandum of Understanding between Pacific Rim Conservation, Inc., and the Department of Land and Natural Resources to conduct habitat restoration, natural resource protection, and predator exclusion fence construction on State lands on Kaua'i, Tax Map Key: (4) 5-9:001:001, subject to approval as to form by the Department of the Attorney General.
3. Authorize the Chairperson to negotiate, approve and execute the Memorandum of Understanding between Pacific Rim Conservation, Inc., and the Department of Land and Natural Resources to conduct habitat restoration, natural resource protection, and predator exclusion fence construction on State lands on Kaua'i, Tax Map Key: (4) 5-9:001:001, subject to approval as to form by the Department of the Attorney General.

Respectfully submitted,



DAVID G. SMITH, Administrator
Division of Forestry and Wildlife

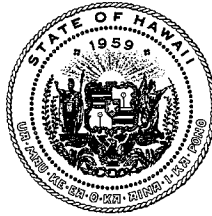
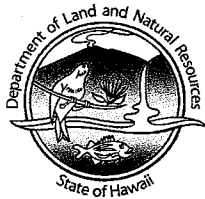
APPROVED FOR SUBMITTAL:



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

Attachment

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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, HRS and Chapter 11-200, HAR

Project Title:	Proposed predator proof fencing and habitat enhancement located at Hono O Na Pali Natural Area Reserve and Na Pali Kona Forest Reserve, Kauia, TMK: (4) 5-9;001: 001
Project Number:	KA-19-NARS
Protect Description:	Installation of various small predator proof fences and associated habitat enhancement such as predator removal, monitoring, and native species restoration.
Consulted Parties:	U.S Fish and Wildlife Services, State Historic Preservation Division
Exemption Class & Number:	3 & 1
Exemption Item Description:	Fences around or to manage rare, threatened or endangered plants, covered and open areas for endangered species, game birds and mammals; auxiliary buildings for food storage, equipment storage, incubators and brooders; open-top breeding and release pens, field aviaries, hacking boxes, and for watershed and native forest management and restoration. Fences shall contain step-overs or other features that permit pedestrian access for cultural and recreational use.
Exemption Class & Exempt Item Number:	4 & 6
Exempt Item Description:	Minor vegetation clearing and management, including mowing, pruning, trimming, and application of federal and state approved herbicides in conformance with label instructions.
Exemption Class and Exempt Item Number:	4 & 16
Exempt Item Description:	Control of pests utilizing federal and state approved pesticides, herbicides, fungicides, and toxicants in conformance with label instructions; traps, snares, lures, and repellents; distribution of biocontrol agents approved by the state of Hawaii; and other approved methods.
Date of Exemption List:	June 5, 2015

Recommendation:	I have considered the potential effects of the above listed project as provided by Chapter 343, HRS and Chapter 11-200 HAR. I declare that this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
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SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

Date

DRAFT

MEMORANDUM OF UNDERSTANDING
BETWEEN
PACIFIC RIM CONSERVATION
AND THE
STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

This Memorandum of Understanding, made and entered into on this _____ day of _____, 2019, by and between the Pacific Rim Conservation, a 501(c)(3) non-profit, hereinafter referred to as "Conservancy" and the State of Hawaii, Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW), by its Board of Land and Natural Resources.

WITNESSETH

WHEREAS, pursuant to section 183D-2, Hawaii Revised Statutes (HRS), the Board is charged with the responsibility of managing and administering the wildlife and wildlife resources of the State; and

WHEREAS, pursuant to section 195D-1, HRS, the Board is charged with the responsibility of ensuring "the continued perpetuation of indigenous aquatic life, wildlife, land plants and their habitats for human enjoyment, for scientific purposes and as members of ecosystems"; and

WHEREAS, the Board is the landowner charged with the responsibility of managing lands at Honopu Forest Reserve and Pohakea within Hono o Na Pali Natural Area Reserve; and

WHEREAS, the Board is restoring nesting habitat for Newell's Shearwater and Hawaiian Petrels

WHEREAS alien species are present at Honopu Forest Reserve and Pohakea within Hono o Na Pali Natural Area Reserve, including pigs, cats, dogs, and rodents;

WHEREAS these alien species cause continuing environmental damage to native species and habitats and the removal of alien species will benefit all native species Honopu Forest Reserve and Pohakea within Hono o Na Pali Natural Area Reserve;

WHEREAS the construction of a predator-proof fence and removal of alien mammals inside these two fences will benefit the ecosystems at Honopu Forest Reserve and Pohakea within Hono o Na Pali Natural Area Reserve and provide improved opportunities for Newell's Shearwater and Hawaiian Petrels conservation; *and*

WHEREAS, the Conservancy is a 501(c)(3) non-profit foundation whose mission is to maintain and restore native bird diversity, populations, and habitats in Hawaii and across the Pacific region. The Conservancy organization is administered by an elected Board of Directors and Officers.

WHEREAS, the Conservancy has successfully worked with the Board to assist with the ongoing management of and research Newell's Shearwaters and Hawaiian Petrels across the state since 2006.

WHEREAS, the Conservancy has assisted in raising funds in support of Newell's Shearwater and Hawaiian Petrels management, and

NOW, THEREFORE, the above parties agree to engage as partners in a cooperative effort to support habitat restoration, natural resource protection, and predator exclusion fence construction. Both parties hereto deem it mutually advantageous and desirable to cooperate and agree to the following provisions.

I. Board Responsibilities:

The Board agrees to undertake the following responsibilities under this Agreement:

1. Secure all necessary permits for construction of both fences
2. Conduct botanical surveys of both fencelines to ensure threatened and endangered plants are not present in the immediate path of the fenceline

II. Conservancy Responsibilities:

The Conservancy agrees to undertake the following responsibilities under this Agreement:

1. Provide funds to construct a 2500 foot long predator exclusion fence at Honopu Forest Reserve and a 2450 foot long fence at Pohakea within Hono o Na Pali Natural Area Reserve
2. Order all necessary materials
3. Select and manage an experienced fence contractor to construct both fences at Honopu Forest Reserve and Pohakea within Hono o Na Pali Natural Area Reserve
4. Assist both the contractor and The Board with activities related to fence construction and management
5. Conduct final fence construction assessments and perform quality control inspections of the contractor.
6. Upon signing the final approved final fence, transfer ownership and responsibility of the completed fences to The Board

III. Term, Evaluation, and Modification.

- A. *Term.* This Agreement is executed as of the last date shown below, which shall be the commencement date. This Agreement will remain in effect for two (2) years after which it is renewable at the option of the Parties.
- B. *Evaluation.* This Agreement may be reviewed, evaluated, and updated at any time, but no later than annually. A record of the evaluation will be appended to the agreement.
- C. *Modification.* This Agreement may be modified at any time by mutual agreement of the Parties. Modifications shall be in writing executed by the authorized officers representing the Conservancy and the Board respectively. For purposes of this modification provision, such authorized officers are Pacific Rim Conservation officers, and the Board of Land and Natural Resources for all substantive changes and the Chairperson of the Board for non-substantive changes to facilitate processing such changes.

IV. Termination.

Either party may terminate, in writing, the Agreement in whole, or in part, at any time before the termination date. Unless otherwise by mutual agreement, 90 days advance notice shall be provided prior to termination.

V. Principle Contacts.

The Principle contacts for administering this Agreement are:

- A. Pacific Rim Conservation
Executive Director
PO Box 61827
Honolulu, HI, 96839

B. State of Hawaii/ Department of Land and Natural Resources
Division of Forestry and Wildlife – Kauai Branch
3060 Eiwa St # 306,
Lihue, HI 96766

VII. Miscellaneous Provisions.

A. *Disclaimers.* Nothing in this Agreement shall be construed as affecting in any way the delegated authority or responsibilities of the Board of Land and Natural Resources. This Agreement shall not supersede any agreements currently in effect between the State and the Conservancy.

B. *Additional Parties.* By Modification of this Agreement by the Parties, additional governmental, non-profit organizations, and other entities may be made party thereto on such terms and conditions as the Board and the Conservancy may agree.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement as of the last date written below.

PACIFIC RIM CONSERVATION

By: _____ Date: _____

Title _____

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

_____, 2019

FOR THE STATE OF HAWAII,
DEPARTMENT OF LAND AND
NATURAL RESOURCES

By: _____ Date: _____

Chairperson, Board of Land and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General

(Date)