

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

December 11, 2020

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

Board Members:

SUBJECT: REQUEST FOR APPROVAL TO AUTHORIZE THE
CHAIRPERSON TO APPROVE AND SIGN A MEMORANDUM
OF AGREEMENT BETWEEN THE STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE AND THE KAUAI
HUMANE SOCIETY (K.H.S) FOR WILDLIFE CARE AND
REHABILITATION ON THE ISLAND OF KAUAI

AND

REQUEST APPROVAL OF DECLARATION OF EXEMPTION
FROM CHAPTER 343, HAWAII REVISIED STATUTES,
ENVIRONMENTAL COMPLIANCE REQUIREMENTS FOR THE
SUBJECT MEMORANDUM OF AGREEMENT

SUMMARY:

This Memorandum of Agreement (MOA), by and between the Kauai Humane Society, herein after referred to as "KHS" and the State of Hawaii, Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife, hereinafter referred to as "DOFAW" for the care and rehabilitation of sick and injured native wildlife on the island of Kauai.

BACKGROUND:

The KHS is a non-profit organization 501(C)3 specializing in the care of pet animals, with their mission being dedicated to ensuring compassionate, informed care of all Kauai's animals and promoting the human-animal bond. The KHS is located on 3-825 Kaumualii Highway 50, one mile west of Puhi, Kauai.

The KHS currently operates and manages DLNR's Save Our Shearwaters (SOS) Program through Kauai Seabird Habitat Conservation Plan (KSHCP) mitigation agreement between the Kauai Island Utility Cooperative (KIUC), U.S. Fish & Wildlife Service, KHS and DLNR. The Request for Approval to authorize Chairperson to approve and sign MOA DLNR/DOFAW-KHS for Wildlife Care and Rehabilitation on the Island of Kauai agreement specifically addresses the care, rehabilitation and release of three federally listed seabird species. These include the Newell's shearwater (*Puffinus auricularis newelli*), Hawaiian petrel (*Pterodroma sandwichensis*) and Band-rumped Storm petrel (*Oceanodroma castro*).

This MOA will replace the current MOA that expires in November 2020, which addresses the need for veterinary care and rehabilitation of native wildlife species not covered under the KSHCP mitigation agreement by permitting some funding to support a Wildlife Rehabilitation Technician and limited operational expenses for Kauai's SOS program. The specific native wildlife species are listed below in the agreement.

The Attorney General is in the process of reviewing the agreement as to form.

DISCUSSION:

This MOA with KHS will assure continued care, rehabilitation and release of Kauai's nene, seabirds and waterbirds by the dedicated and trained staff of KHS.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

DOFAW activities to be conducted under the terms of this MOA include the rehabilitation of BSA-listed and native birds on Kauai. These are minor actions that will probably have minimal or no significant effects on the environment and are exempt from the requirement to prepare an environmental assessment in accordance with Chapter 343, HRS, and Chapter 11-200-8, Hawai'i Administrative Rules, under the Department's following exemption classes (Exemption List for the Department of Land and Natural Resources, Reviewed and Concurred Upon by the Environmental Council on June 05, 2015):

Exemption Class 1: Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing.

Exemption Class 5: Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.

RECOMMENDATIONS:

That the Board:

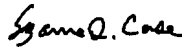
1. Authorize the Chairperson to negotiate, sign, execute, and amend a Memorandum of Agreement between the Board of Land and Natural Resources and the Kauai Humane Society, subject to the Department of the Attorney General's approval as to form.
2. Approve a declaration of exemption from the requirement of Chapter 343, Hawai'i

Respectfully submitted,



David G. Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



Suzanne. D. Case, Chairperson
Board of Land and Natural Resources

1. Draft Memorandum of Agreement

**MEMORANDUM OF AGREEMENT
BETWEEN THE STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE AND THE KAUAI HUMANE SOCIETY FOR
WILDLIFE CARE AND REHABILITATION ON THE
ISLAND OF KAUAI**

This Memorandum of Agreement (MOA), for the care and rehabilitation of sick and injured native wildlife on the island of Kauai is effective this 29 day of November, 2020, by and between the Kauai Humane Society, a Hawaii nonprofit corporation (hereinafter referred to as "KHS"), whose mailing address is P.O. Box 3330, Lihue, Hawaii 96766, and shelter address is 3-825 Kaunualii Highway, Lihue, Hawaii 96766, and the State of Hawaii, Board of Land and Natural Resources by its Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife, (hereinafter referred to as "DOFAW"), whose mailing address is 1151 Punchbowl Street, Room 325, Honolulu, Hawaii 96813.

RECITALS

Whereas, the KHS is a 501(c)(3) non-profit organization specializing in the care of pet animals, with their mission being dedicated to ensuring compassionate, informed care of all Kauai's animals and promoting the human-animal bond. The KHS is located on 3-825 Kaunualii Highway, approximately one mile west of Puhā, Kauai and the Kauai Community College.

Whereas, the KHS currently operates and manages DLNR's Save Our Shearwaters (SOS) Program through the Kauai Seabird Habitat Conservation Plan (KSHCP) mitigation agreement between the Kauai Island Utility Cooperative (KIUC), U.S. Fish & Wildlife Service, KHS and DLNR. The agreement specifically addresses the care, rehabilitation and release of three federally-listed seabird species. These include the Newell's shearwater (*Puffinus auricularis newelli*), Hawaiian petrel (*Pterodroma sandwichensis*) and Band-rumped storm petrel (*Oceanodroma castro*).

Whereas, this MOA is intended to address the need for veterinary care and rehabilitation of native wildlife species not covered under the KSHCP mitigation agreement. The native wildlife species covered by this MOA are listed below in the agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties mutually agree as follows:

AGREEMENT

KHS shall:

- Provide their facilities, utilities, and services for the care and rehabilitation of sick and injured native wildlife on fee basis. Their services would cover the following

federally listed species: Hawaiian goose (*Branta sandvicensis*), Hawaiian duck (*Anas wyvilliana*), Hawaiian gallinule (*Gallinula galeata sandvicensis*), Hawaiian coot (*Fulica alai*), Hawaiian stilt (*Himantopus mexicanus knudseni*) and Hawaiian bat (*Lasiurus cinereus semotus*).

- Provide care and rehabilitation to Migratory Bird Treaty Act (MBTA) species, including but not limited to following Hawaiian species: Wedge-tailed shearwater (*Puffinus pacificus*), Laysan albatross (*Phoebastria immutabilis*), White-tailed tropicbird (*Phaethon lepturus*).
- Hire and supervise one part-time (4 days/week) Wildlife Rehabilitation Technician (WRT) who will be stationed at the KHS located on 3-825 Kaunualii Highway in Puhi, Kauai.
- Provide the work schedule for the WRT which may include weekends, holidays and evening hours.
- Provide a vehicle for the WRT to use to conduct the duties described below.
- Provide wildlife educational outreach in concert with DOFAW.

Duties of the WRT include the following:

- Transporting compromised wildlife to the KHS facility.
- Perform general rehabilitation procedures such as avian gavage and other basic husbandry techniques.
- Assist in the husbandry of individuals undergoing rehabilitation.
- Regular cleaning of equipment and cages.
- Data entry of sick and injured birds in care and rehabilitation.
- Provide an annual report to DOFAW.
- The WRT will be responsible for his/her own transportation to and from the KHS.

DOFAW shall:

- Provide funds necessary for KHS to employ one full-time wildlife rehabilitation technician (WRT). This employment is not intended to create a state employment relationship and shall be as an independent contractor with respect to the State of Hawaii.
- Provide funds for wildlife veterinary supplies and office supplies.
- Provide funds for vehicle fuel and maintenance.
- Provide manpower assistance to KHS during an emergency wildlife crisis involving a large number of sick or injured birds.
- Provide recommendations to improve wildlife care and rehabilitation.
- Assist KHS in wildlife outreach when the opportunity arises.

Position Title	Work Duration	Hours/ Week	Hours/ Year	Hourly Rate	w/ Overtime, Telephone Reimbursement, Payroll Taxes, Payroll Fee	Insurance (Medical/Dental, TDI, Workers' Comp, Employee Practice Liability)	Annual
Wildlife Rehabilitation Technician	January 1, 2021 to December 31, 2021	40 hours	2,080 hours	\$17.00 (\$35,360 Annual)	\$19.79 (\$41,154.52 Annual)	\$8,276.68	\$49,431.20

Estimated Operational Expenses	Total Cost
Animal Care (Food, Housing, Medical)	\$3,000.00
Vehicle Fuel and Maintenance	\$800.00
Office Supplies	\$100.00
Sub Total	\$3,900
Total	\$53,331.20

Indemnification:

KHS agrees to indemnify and hold harmless the DOFAW or any affiliates thereof (including any official, representative, agent, director or officer thereof) (collectively, the "Indemnified Parties") from and against all claims, liabilities, damages, or legal actions of any kind or nature whatsoever arising out of, because of, or due to the breach of any condition or responsibility under this memorandum of agreement by the KHS site manager, KHS employees, agents, and/or representatives, or due to any act or occurrence of omission of the site manager, including but not limited to reasonable costs and reasonable attorney's fees. In lawsuits against an Indemnified Party arising out of official duties under the memorandum of agreement, the Indemnified Party, at its sole option, may defend itself or require the site manager to provide the defense.

DOFAW agrees to be responsible to the KHS or any affiliates thereof (including any official, representative, agent, director or officer thereof) (collectively, the "Indemnified Parties") from and against all claims, liabilities, damages, or legal actions of any kind or nature whatsoever arising out of, because of, or due to the breach of any condition or responsibility under this memorandum of agreement by DOFAW, its employees, agents, and/or representatives, or due to any act or occurrence of omission of DOFAW, including but not limited to reasonable costs and reasonable attorney's fees if found by a court of law and appropriated by the Legislature. In lawsuits against an Indemnified Party arising out of official duties under the memorandum of agreement, the Indemnified Party, at its sole option, may defend itself or request the State of Hawaii to provide the defense.

This agreement shall be in effect from the effective date hereinabove to December 31, 2021. If both parties agree in writing prior to the expiration date, this agreement may be extended to continue wildlife rehabilitation care to a further extension date.

Termination of this Memorandum of Agreement can be made by either or both parties with a minimum of one month of advance notification provided in writing to the other party.

This Memorandum of Agreement constitutes the entire agreement of the parties hereto. By signing below, the persons signing are indicating that they have the requisite authority to enter into this agreement on behalf of their respective party.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement effective as of the date, month, and year first above written.

FOR KAUAI HUMANE SOCIETY
a Hawaii Nonprofit Corporation

Mirah Horowitz, Executive Director
Kauai Humane Society

Date

FOR DLNR/DOFAW

Suzanne Case, Chairperson
Board of Land and Natural Resources
State of Hawaii

Date

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

Date