

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

May 14, 2021

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

REQUEST FOR APPROVAL OF THE USE OF TWO DATA-SHARING AGREEMENT  
TEMPLATES FOR THE PURPOSE OF PROTECTING LOCATION INFORMATION  
CONNECTED WITH THREATENED AND ENDANGERED SPECIES FOUND ON  
PRIVATE PROPERTY AND DELEGATION OF AUTHORITY TO DOFAW  
ADMINISTRATOR TO ENTER INTO AGREEMENTS

SUMMARY

The Division of Forestry and Wildlife ("DOFAW") requests approval for the use of two data-sharing agreement templates for the purpose of protecting location information connected with threatened and endangered species found on private property, and preventing the dissemination of threatened and endangered species location data to unauthorized parties. The data-sharing agreement templates would be used by DOFAW for specific projects and approved by the DOFAW Administrator.

BACKGROUND

DOFAW regulates activities affecting mostly terrestrial threatened and endangered species throughout the state through Chapter 195D, Hawai'i Revised Statutes (HRS). Threatened and endangered species do not recognize property boundaries and are found on public and private lands. DOFAW monitors and manages populations of threatened and endangered species wherever they live and wants to work with private landowners for effective long-term management of those species. Private property owners with threatened and endangered species are not always open to state government monitoring threatened and endangered species on their property because of fears of over regulation. These data-sharing agreement templates protect private landowner information and those data related to threatened and endangered species location on private land for the purpose of improving relationships between DOFAW and private landowners.

## DISCUSSION

The purposes of the two data-sharing agreement templates are to protect location information connected with threatened or endangered species and prevent the dissemination of threatened and endangered species location data on private land.

The Landowner Data-Sharing and Usage Agreement template (“Exhibit 1”) protects landowner information connected with threatened or endangered species for a specific property. In this agreement template, DOFAW agrees to take reasonable care not to release the names and addresses of landowners or information that could be linked to an individual landowner, unless required under operation of law. If DOFAW receives a request for information protected by this agreement under Chapter 92F, HRS, DOFAW would provide timely notice to the landowner. DOFAW and the landowner may agree that DOFAW can disclose information protected by this agreement to a third party so long as DOFAW and the third party enter into a Data-Sharing and Usage Agreement (“Exhibit 2”). Data collected under this agreement would remain property of DOFAW.

The Third-Party Data-Sharing and Usage Agreement template (“Exhibit 2”) prevents the dissemination of threatened and endangered species location data to unauthorized parties. The recipient of this agreement agrees not to share, publish, present, or otherwise release landowner information, including presenting the results of threatened and endangered species data analyses and maps developed by a third party, that could identify that landowner when threatened and endangered species are found on their property. The recipient would need written approval from DOFAW before sharing threatened and endangered species data to a third party that does not identify the landowner. Data collected under this agreement would remain property of DOFAW.

DOFAW staff would use the two data-sharing templates for specific projects. The DOFAW Administrator would authorize the final agreement.

## RECOMMENDATION

That the Board

1. Approve the Landowner Data-Sharing and Usage Agreement template for use by Division of Forestry and Wildlife to protect landowner information connected with threatened or endangered species for a specific property;
2. Approve the Third-Party Data-Sharing and Usage Agreement template for use by Division of Forestry and Wildlife to prevent the dissemination of threatened and endangered species location data to unauthorized parties.; and
3. Delegate to the Division of Forestry and Wildlife Administrator authority to finalize the Landowner Data-Sharing and Usage Agreement and Data-Sharing and Usage Agreement template for specific projects.

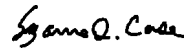
Respectfully submitted,



---

David G. Smith, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL



---

Suzanne Case, Chairperson  
Board of Land and Natural Resources

Exhibits:

1. Landowner Data-Sharing and Usage Agreement template
2. Third-Party Data-Sharing and Usage Agreement template



**State of Hawaii**  
**Department of Land and Natural Resources**  
**Division of Forestry and Wildlife**  
1151 Punchbowl Street, Room 325  
Honolulu, HI 96813

---

**Landowner Data-Sharing and Usage Agreement**

---

**Hawaii Division of Forestry and Wildlife (DOFAW) and \_\_\_\_\_** (Hereafter: "LANDOWNER")

This agreement establishes the terms and conditions under which DOFAW can use Sensitive Species Occurrence Data (SSOD) from LANDOWNER. Unless terminated by either party with thirty (30) days notice, this agreement expires on \_\_\_\_\_.

SSOD includes information or data that may reveal the location of threatened or endangered species including but not limited to pictures of species or habitat; narratives and place names describing observations, pictures, or collections; species monitoring forms and/or databases and other files that contain written directions, population, reference codes, or Global Positioning System (GPS) coordinates; maps and geospatial data of points areas; or historical occurrence records from the Hawai'i Biodiversity Mapping Program (HBMP), herbaria, DNA libraries, and other curated collections.

WHEREAS subject property is defined as Tax Map Key (TMK) parcel(s) \_\_\_\_\_ owned or managed by LANDOWNER, described in this agreement. DOFAW will take reasonable care not to release SSOD located on the subject property to a third party, unless required under operation of law.

1. The confidentiality of SSOD pertaining to LANDOWNER will be protected as follows:
  - a. DOFAW will take reasonable care not to release the names of landowners, or information that could be linked to an individual landowner, nor present the results of data analysis (including maps) in any manner that would reveal the identity of an individual landowner, unless required under operation of law.
  - b. DOFAW will take reasonable care not to release individual addresses, nor present the results of data analysis (including maps) in any manner that would reveal addresses or other personally identifiable or confidential information of an individual landowner, unless required under operation of law.
  - c. Both parties shall comply with all Federal and State laws and regulations governing the confidentiality of the information that is the subject of this Agreement.
  - d. In the event DOFAW or any department, agency, or official of the State of Hawai'i receives a request for the Documents pursuant to Haw. Rev. Stat. chapter 92F, DOFAW will object to production pursuant to Haw. Rev. Stat. § 92-13 or otherwise and will provide timely notice to Landowner. In the event of any court action pursuant to chapter 92F, Landowner will attempt to intervene.
  - e. In the event DOFAW is served with a subpoena or a request for discovery of the SSOD pursuant to any court rule, DOFAW will provide timely notice to Landowner so that Landowner may take appropriate action.

2. DOFAW may disclose SSOD to a third party after DOFAW and the third party agree to terms outlined in the DLNR-DOFAW Data-Sharing and Usage Agreement.
3. All data collected by DOFAW shall remain the property of DOFAW.
4. This agreement is transferable upon sale of the subject property.
5. Notices. All notices pertaining to this Agreement shall be in writing delivered to the parties hereto by facsimile transmission, personally by hand, courier service or Express Mail, or by first class mail, postage prepared, at the addresses set forth below. All notices shall be deemed given: (a) if sent by mail, when received or when delivery refused; (b) if delivered by hand, courier service or Express Mail, when delivered; or (c) if transmitted by facsimile, when transmitted, with delivery confirmed. The parties may, by notice as provided above, designate a different address to which notice shall be given.

DOFAW fax number and mailing address:

(808) 587-0160  
 Division of Forestry and Wildlife  
 Kalanimoku Building  
 1151 Punchbowl St., Rm. 325  
 Honolulu, HI 96813

LANDOWNER fax number and mailing address:

---



---



---

6. Binding on Successors. Subject to approval by the Board of Land and Natural Resources which approval is at the Board's discretion, this Agreement shall be binding not only upon the parties but also upon their heirs, personal representatives, assigns and other successors in interest.
7. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between DOFAW and LANDOWNER pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver and agreeable to both parties.
8. Counterparts. This Agreement may be executed in counterparts; each of which shall be deemed an original and which together shall constitute one and the same agreement.
9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii.

IN WITNESS WHEREOF, both the Division of Forestry and Wildlife, through its duly authorized representative, and \_\_\_\_\_, through its duly authorized representative, have hereunto executed this Data Sharing Agreement as of the last date below written.

x \_\_\_\_\_  
**Administrator, Division of Forestry and Wildlife**

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

x \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (print name)  
\_\_\_\_\_ (organization)

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



**State of Hawaii**  
**Department of Land and Natural Resources**  
**Division of Forestry and Wildlife**  
1151 Punchbowl Street, Room 325  
Honolulu, HI 96813

---

**Third-Party Data-Sharing and Usage Agreement**

---

**Hawai'i Division of Forestry and Wildlife (DOFAW) and \_\_\_\_\_** (Hereafter: "RECIPIENT")

This agreement establishes the terms and conditions under which RECIPIENT can use data acquired from DOFAW, including Sensitive Species Occurrence Data (SSOD). Unless terminated by either party with thirty (30) days written notice. This agreement expires on \_\_\_\_\_.

SSOD includes information or data that may reveal the location of threatened or endangered species including but not limited to pictures of species or habitat; narratives and place names describing observations, pictures, or collections; species monitoring forms and/or databases and other files that contain written directions, population, reference codes, or Global Positioning System (GPS) coordinates; maps and geospatial data of points areas; or historical occurrence records from the Hawai'i Biodiversity Mapping Program (HBMP), herbaria, DNA libraries, and other curated collections.

In order to protect SSOD and the location of threatened or endangered species, the following requirements will be imposed on anyone seeking access to any SSOD under DOFAW's control or management:

1. Data pertaining to private lands where threatened and endangered species have been found:
  - a. RECIPIENT will not share, publish, present, or otherwise release the names of landowners, or information that could be linked to an individual landowner, nor present the results of data analysis (including maps) in any manner that would reveal the identity of an individual landowner without DOFAW obtaining prior written permission from the landowner.
  - b. RECIPIENT will not share, publish, present, or otherwise release individual addresses, nor present the results of data analysis (including maps) in any manner that would reveal addresses or other personally identifiable or confidential information of an individual landowner without DOFAW obtaining prior written permission from the landowner.
  - c. Both parties shall comply with all Federal and State laws and regulations governing the confidentiality of the information that is the subject of this Agreement.
  - d. RECIPIENT is not authorized to contact any private landowner directly on matters related to this Agreement.
2. RECIPIENT will not share, publish, present, or otherwise release SSOD to a third party.
3. RECIPIENT will not share, publish, present, or otherwise release SSOD, maps, or results obtained from DOFAW in any manner that would reveal the location of threatened and endangered species wherever they occur.
4. RECIPIENT will not share, publish, present, or otherwise release any findings or conclusions derived from analysis of SSOD without prior written approval from DOFAW. Approval will be limited to protecting the

confidentiality of the landowner and the location of threatened and endangered species contained in SSOD, not in the findings and conclusions of the analysis.

5. DOFAW contacts for this Agreement are as follows:

For Private and DOFAW-managed Lands:

Rare Species (plants and invertebrates): Native Ecosystem Protection and Management Program Manager

Rare Species (all other wildlife): Wildlife Program Manager

For SSOD found in Natural Area Reserves or Forest Reserves:

Natural Area Reserve: Native Ecosystem Protection and Management Program Manager

Forest Reserve: Forestry Program Manager

6. All data transferred to RECIPIENT by DOFAW shall remain the property of DOFAW and shall be returned to DOFAW and/or destroyed/deleted upon termination or expiration of this Agreement. DOFAW may require verification of destruction or deletion of data at time of termination or expiration of this Agreement.
7. Notices. All notices pertaining to this Agreement shall be in writing delivered to the parties hereto by email, personally by hand, courier service or Express Mail, or by first class mail, postage prepared, at the addresses set forth below. All notices shall be deemed given: (a) if sent by mail, when received or when delivery refused; (b) if delivered by hand, courier service or Express Mail, when delivered; or (c) if transmitted by email, when transmitted, with delivery confirmed. If transmitted by email, indicate which Program Manager to direct the inquiry (see bullet 5). The parties may, by notice as provided above, designate a different address to which notice shall be given.

DOFAW phone number, mailing address, and email:

PHONE: (808) 587-0166  
Division of Forestry and Wildlife  
Kalanimoku Building  
1151 Punchbowl St., Rm. 325  
Honolulu, HI 96813  
dlnr@hawaii.gov  
Attn: [see bullet 4 for appropriate program manager]

RECIPIENT number and mailing address:

---

---

---

8. Binding on Successors. Subject to approval by the Board of Land and Natural Resources which approval is at the Board's discretion, this Agreement shall be binding not only upon the parties but also upon their heirs, personal representatives, assigns and other successors in interest.
9. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between DOFAW and RECIPIENT pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver and agreeable to both parties.



- 10. Counterparts. This Agreement may be executed in counterparts; each of which shall be deemed an original and which together shall constitute one and the same agreement.
- 11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii.
- 12. In the event RECIPIENT fails to comply with any terms of this Agreement, DOFAW shall have the right to refuse further release of SSOD to the RECIPIENT under this Agreement.

IN WITNESS WHEREOF, both the Division of Forestry and Wildlife, through its Administrator, and \_\_\_\_\_, have hereunto executed this Data Sharing Agreement as of the last date below written.

x \_\_\_\_\_  
**Administrator, Division of Forestry and Wildlife**

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

x \_\_\_\_\_  
 \_\_\_\_\_ (print name)  
 \_\_\_\_\_ (organization)

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

