

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

September 24, 2021

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

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH OAHU RESOURCE CONSERVATION AND DEVELOPMENT COUNCIL TO BUILD PARTNERSHIPS BETWEEN THE AGRICULTURAL SECTOR AND THE HUNTING COMMUNITY REGARDING THE WINDWARD OAHU FERAL SWINE CONTROL PILOT PROJECT.

SUMMARY:

This Board Submittal requests approval to enter into a Memorandum of Understanding ("MOU"), establishing a written agreement to formalize a partnership between the Department of Land and Natural Resources ("DLNR"), Division of Forestry and Wildlife ("DOFAW"), Oahu Branch and Oahu Resource Conservation and Development Council ("ORCD"), a 501(c)(3) nonprofit organization, to work toward establishing partnerships between the agricultural sector and the hunting community.

The draft MOU between DOFAW and ORCD was submitted to the State's Department of the Attorney General for legal review.

BACKGROUND:

Feral pigs in the Windward Oahu region have been identified as a nuisance species by the U.S. Department of Agriculture's Natural Resources Conservation Service, due to their destruction of crops, livestock, and other agricultural resources.¹ DOFAW was recently awarded a Federal Grant (NR2192510002G001), titled: "Windward Oahu Feral Swine Control Pilot Project." This project will establish a regional feral pig control program to address damages caused by feral pigs in both agricultural and natural resource priority areas. A key component to this project is to ensure community stakeholders and agricultural ("ag") producers are involved in the program's development in order to foster long-term stewardship relationships.

¹See "Hawaii Windward Oahu Feral Swine Control Pilot Project," NRCS.USDA.gov, available at <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/farmland/?cid=nrcseprd1659219> [last accessed: Apr. 20, 2021].

In Phase One of the project, lowland agricultural resource areas will be identified and prioritized for protection. Establishing partnerships with organizations and groups integrated in the agricultural sector is a key step in Phase One. ORCD will only be involved in Phase One, Phase Two will focus on other areas in the region.

Since DOFAW has limited experience and expertise working in this sector and region, the Oahu Resource Conservation and Development Council (ORCD), was identified as a key group in which to form a partnership. One of the goals for ORCD, in the Windward Oahu Region, is to improve the quality of life of the people of O'ahu by encouraging and assisting local leadership to develop and carry out activities that conserve and sustain our natural, human, cultural and economic resources. They are also adept at implementing projects that enhance stewardship of working lands and has over twenty years of experience in recruiting and engaging agricultural stakeholders in activities that support sustainable agricultural production.

The MOU will help to define and formalize a partnership to help DOFAW accomplish tasks laid out in the grant objectives. ORCD will provide technical expertise to identify areas in which feral pigs are causing damage to agricultural producers. Once areas are identified, DOFAW and ORCD will work toward establishing agreements with the ag producers to initiate trapping operations. DOFAW and ORCD will also work with area hunters, stakeholders, and community groups to establish protocols for meat salvage and utilization of volunteers to assist in operations. The groups, stakeholders, hunters, community members, etc. will be contacted through targeted outreach and the expansion of already formed relationships.

The federal grant also authorized a portion of the funding to be used for outreach and education purposes, to ensure transparency and stakeholder involvement. The MOU would also detail an allotment of \$25,000 to ORCD for their support related to coordination, outreach and education in Phase One. The funds were allocated and detailed as part of the grant award. ORCD has agreed, in principle to the amount.

Chapter 343 – Compliance with Environmental Law

The MOU to build partnerships in support of DOFAW's Windward Oahu Feral Swine Control Pilot Project involves the use of state lands. The Department has determined that the actions contemplated under this MOU will have little or no significant effect on the environment and are exempt from the preparation of an environmental assessment under **General Exemption Type 5** (Basic data collection, research, experimental management, and resources and infrastructure testing and evaluation activities that do not result in a serious or major disturbance to an environmental resource), **see attached exemption declaration**

RECOMMENDATION:

That the Board hereby:

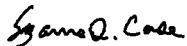
- 1) Declare that the actions which are anticipated to be undertaken under this MOU will have little or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
- 2) Upon the Board's finding and adoption of the department's analysis, delegate and authorize the Chairperson to sign the declaration of exemption for purposes of recordkeeping requirements of Chapter 343, Hawaii Revised Statutes, and Chapter 11-200, Hawai'i Administrative Rules.
- 3) Authorize the Chairperson to enter and sign the Memorandum of Understanding with ORCD for Windward Oahu Feral Swine Control Pilot Project, providing that the Attorney General review and approve the contents of the Memorandum of Understanding to ensure compliance with all State requirements.

Respectfully submitted,



David G. Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



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

ATTACHMENTS: **Exhibit A:** Draft Memorandum of Understanding between the DLNR
and ORCD
Exhibit B: Declaration of Exemption

MEMORANDUM OF UNDERSTANDING
BETWEEN
OAHU RESOURCE CONSERVATION AND DEVELOPMENT COUNCIL
AND THE
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

This Memorandum of Understanding ("MOU"), made and entered into on this _____ day of _____, 2021, which shall be effective as of the date of the last signature executed below ("Effective Date"), by and between Oahu Resource Conservation and Development Council ("ORCD"), a Hawaii Nonprofit Organization and the State of Hawai'i, Department of Land and Natural Resources ("DLNR"), Division of Forestry and Wildlife ("DOFAW"), by its Board of Land and Natural Resources ("BLNR" or "Board").

RECITALS

WHEREAS, pursuant to section 183D-2(1) & (2), Hawai'i Revised Statutes ("HRS"), DLNR is required to "manage and administer the wildlife and wildlife resources of the State" of Hawai'i and "Preserve, protect, and promote public hunting"; and

WHEREAS, pursuant to section 185D-51 (a) and (b), DLNR is charged with enforcing: "wildlife laws of the State", and Feral Pigs (*Sus scrofa*) are designated a Game Mammal, which are be regulated by DLNR Rules and Regulations; and

WHEREAS, Feral Pigs in the Windward Oahu region, have been identified as a nuisance species by the Natural Resources Conservation Service (NRCS), due to their destruction to crops, livestock and other agricultural resources; and

WHEREAS, the DLNR/DOFAW identifies Feral Pigs as both a nuisance species and game resource for recreational hunting; and

WHEREAS, the DLNR/DOFAW seeks to partner with agencies, groups or other organizations considering control options for game mammals, to ensure opportunities for the public hunters; and

WHEREAS, the DLNR/DOFAW was recently awarded a Federal Grant titled: "Windward Oahu Feral Swine Control Pilot Project" in which DOFAW will establish working groups, coordinate operations, and involve public hunters in a region wide feral pig control program; and

WHEREAS, ORCD is a 501(c)-3 non-profit organization incorporated in the State of Hawai'i, whose purpose is to improve the quality of life of the people of O'ahu by encouraging and assisting local leadership to develop and carry out activities that conserve and sustain our natural, human, cultural and economic resources; and

WHEREAS, ORCD implements projects that enhance stewardship of working lands and has over twenty years of experience in recruiting and engaging agricultural stakeholders in activities that support sustainable agricultural production; and

WHEREAS, ORCD will bring its educational and community engagement expertise to the project, while DLNR/DOFAW has limited staff and funding for such activities; and

WHEREAS, extending information to the public about appreciating, understanding and protecting natural resources is a priority of DLNR/DOFAW, and any increase in public involvement would help to facilitate proper management of these resources; and

WHEREAS, a Memorandum of Understanding that clarifies the relationship between DOFAW and ORCD would greatly benefit both parties and the general public by facilitating integration of DOFAW operations to the agricultural sector. The relationship would allow for DOFAW to determine efficient methods for feral pig trapping in areas of agricultural significance while involving the public hunters seeking to salvage feral pigs trapped under this program. ORCD would serve as a liaison, with expertise in agricultural programs on windward Oahu. Now therefore, in order to accomplish the foregoing, both parties hereto deem it mutually advantageous and desirable to cooperate and hereby agree, as described below.

TERMS OF AGREEMENT

NOW, THEREFORE, the parties hereto agree as follows:

A. General Provisions

1. Subject to Approval. This MOU and all of its terms are subject to approval by the BLNR.
2. Governing Law. This MOU shall be construed, interpreted, and applied in accordance with the laws of the State of Hawai'i.
3. Modifications. This MOU may be amended only by written agreement of the parties hereto.

DOFAW/ORCD
Memorandum of Understanding

4. Cooperation and Good Faith. The parties shall cooperate and negotiate in good faith the terms to complete and execute the definitive documents and instruments necessary to accomplish the intended goals. The terms and conditions of any future agreement shall be consistent with this MOU and upon such other terms as the parties may agree in writing.

B. DOFAW agrees to:

1. Work with ORCD to develop a "Feral Swine Control" working group that will provide integration and coordination of Federal and State Agencies, hunting stakeholder groups, private Agricultural Producers and other conservation organizations
2. Support ORCD by coordinating logistics and trapping operations done by State and Federal employees to ensure proper service is provided to Agricultural Producers
3. Coordinate and develop agreements between ORCD, Ag Producers, DOFAW and hunting stakeholder groups or individual public hunters to establish protocols for feral pig harvest on private lands.
4. Contribute \$25,000 to support an ORCD liaison to coordinate outreach, education and information aimed at Agricultural Producers

C. ORCD agrees to:

1. Support DOFAW's "Feral Swine Control" working group by liaising with Ag Producers and facilitating access to the land of consenting Ag Producers for the purposes of trapping;
2. Actively provide outreach and educational information regarding the benefits of this project to the Ag Producer community;
3. Assist DOFAW by facilitating or encouraging independent agreements between hunting stakeholder groups and Ag Producers to harvest game on private lots;
4. Indemnify and hold harmless 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 MOU by ORCD, ORCD 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 the Indemnified Party arising out of official duties under this MOU, the Indemnified Party, at its sole option, may defend itself or require the site manager to provide the defense.

D. Miscellaneous Provisions

1. Partial Invalidity. If any provision of the MOU or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remaining provisions of this MOU, or the application of such provision to person or circumstances other than those as to which it is invalid or unenforceable, shall not be affected.
2. Duration. This MOU will remain in effect as long as both parties abide by the conditions stated herein.
3. Termination. This MOU may be terminated by ORCD or DOFAW upon Thirty (30) Days written notice to the other party, effective as of the expiration of the notice period.
4. No Third-Party Beneficiaries. No term or provision of the MOU is intended to be, or shall it be, for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
5. No Partnership. Any intention to create a joint venture or partnership relation between the parties hereto is expressly disclaimed.
6. Binding on and Inuring to Benefit of Successors and Assigns. This MOU shall be binding upon and shall inure to the benefit of the parties, and their respective successors and assigns.
7. Notices. All notices, bills, demands, payments, accounting or other communications that any party desires or is required to give under the provisions of this MOU shall be given in writing and shall be deemed to have been received by a party when actually received in the case of hand delivery, facsimile transmission, e-mail, or internationally recognized courier services, or three (3) days after being sent by United States mail, as the case may be, prepaid to the party or parties at the address noted

below provided, however, that any and all notices under Section 19, shall be delivered by Certified Mail:

ORCD: Oahu RC&D
PO Box 209
Kunia, HI 96759
admin@oahurcd.org

DLNR: Division of Forestry and Wildlife
Department of Land and Natural Resources
2135 Makiki Heights Drive
Honolulu, Hawai'i 96822
Facsimile No.: (808) 973-9781

8. Counterparts; Facsimile Execution. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding upon all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of the instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded, and the remaining pages assembled as one document. An executed counterpart of this instrument transmitted and received by facsimile or email shall be deemed for all purposes to be an original, executed counterpart thereof.

DOFAW/ORCD
Memorandum of Understanding

IN WITNESS WHEREOF, O'ahu Resource Conservation and Development Council, and the State of Hawaii, Department of Land and Natural Resources' Division of Forestry and Wildlife agree to the execution of this Memorandum of Understanding as of the date herein written with the signatures below.

FOR O'AHU RESOURCE CONSERVATION
AND DEVELOPMENT COUNCIL

By: _____
(Signature) (Date)

(Printed Name)

(Title)

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

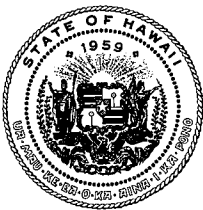
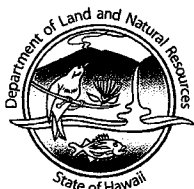
FOR THE STATE OF HAWAII,
DEPARTMENT OF LAND AND
NATURAL RESOURCES

By: _____
Suzanne D. Case (Date)
Chairperson,
Board of Land & Natural Resources

APPROVED AS TO FORM:

(Date)
Deputy Attorney General,
State of Hawai'i

DAVID Y. IGE
GOVERNOR OF
HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 23, 2021

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
KAIHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

TO: Division of Forestry and Wildlife File

THROUGH: Suzanne D. Case, Chairperson, BLNR

FROM: David G. Smith, Administration, Division of Forestry and Wildlife

SUBJECT: DECLARATION OF EXEMPTION

Regarding the preparation of an environmental assessment under the authority of Chapter 343, Hawaii Revised Statutes and Chapter 11-200-8, Hawaii Administrative Rules, for a Request to enter into a Federally Funded Memorandum of Understanding ("MOU") between the Oahu Resource Conservation and Development Council ("ORCD"), a Hawai'i Nonprofit Organization and the State of Hawai'i, Department of Land and Natural Resources ("DLNR")—as "Phase One" of the Windward Oahu Feral Swine Control Pilot Project.

Project Title: "Windward Oahu Feral Swine Control Pilot Project."

The project is part of a Federal Grant, awarded to the DLNR's Division of Forestry and Wildlife ("DOFAW"), Oahu Branch. DOFAW requests to enter into an MOU with ORCD for \$25,000 to provide outreach and educational services to Windward Agricultural Producers. The outreach and educational services would support the "Windward Oahu Feral Swine Control Pilot Project".

Project Location: Windward Oahu Region, Koolaupoko. Specific areas to be determined.

Project Description: This project is expected to occur in two phases, each of which is aimed at reducing feral swine populations in order to reduce their negative impacts (such as damage to agriculture and natural resources) in Windward Oahu. Phase One of the project focuses on low-elevation agricultural ("ag") producers and the refinement of trapping protocols and procedures. Phase Two focuses on upper-elevation, watershed priority areas and measuring the efficacy of trap procedures and protocols the project is expected to develop during Phase One. Phase Two will prioritize native species protection and habitat preservation. The MOU will focus solely on education and outreach in low elevation ag producers to demonstrate the benefits of this program

Declaration of Exemption – Windward Oahu Feral Swine Control Pilot Project (Phase One)
Page 2

and directly relates only to the project’s Phase One; ORCD is not expected to participate in Phase Two of the project. This instant declaration of exemption addresses ORCD’s expected participation in Phase One only.

The goal of this partnership between the DLNR and ORCD in Phase One of the project is to establish relationships with Windward Oahu-based ag producers in order to identify where feral swine are causing the most prevalent damage to agricultural and natural resources. ORCD will provide subject-matter expertise to develop educational and outreach strategies to demonstrate the benefits of feral swine control to reduce crop damage. Once ag producers are identified, DOFAW staff will develop agreements to initiate a trapping program in these areas.

The objectives for ORCD in Phase One of the project are:

1. Conduct targeted education and outreach campaigns in communities/ locations where crop damage resulting from feral swine is most prevalent;
2. Coordinate and participate in outreach events related to the project; and
3. Assist in the development and coordination of the “Feral Swine Control Working Group,” which we anticipate will consist of stakeholders, State-and-Federal Agencies, local ag producers and other parties relevant to the project.

Education and outreach to the identified stakeholders, ag producers, and other relevant businesses will be conducted to provide information about the potential benefits of the feral swine control pilot program. Outreach will consist of community events, workshops, social media posts, targeted electronic communications (e-mail), and informational updates to both DOFAW’s and ORCD’s websites. The Feral Swine Control Working Group will work to ensure transparency and the exchange of information between the pilot project participants, partners, and community stakeholders.

The outreach and educational activities, described in “Phase One” of the Windward Oahu Feral Swine Control Pilot Project, are exempt from the preparation of an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes (“HRS”), and Chapter 11-200.1, Hawaii Administrative Rules (“HAR”). In accordance with the revised Exemption List for the Department of Land and Natural Resources (reviewed and concurred on by the Environmental Council on November 10, 2020), these activities are categorized as “Part 1” under HAR § 11-200.1-16(a)(1), and therefore they do not *require* the instant “exemption notice” under HRS chapter 343. The objectives for ORCD in Phase One are non-operational, and ORCD’s contemplated activities in furtherance of those objectives will have no adverse impact on the environment, as those activities would only involve educational outreach, passive observation, non-destructive data collection by project personnel, and continuing administrative activities.¹

¹ Non-education-and-outreach related operations involving trapping and removal of feral swine and other similar activities—which are expected to be carried out by *non*-ORCD personnel during Phase One—will require an exemption notice pursuant to HAR § 11-200.1-16(a)(2), which DOFAW intends to prepare separately at a later date.

Declaration of Exemption – Windward Oahu Feral Swine Control Pilot Project (Phase One)
Page 2

Although an exemption notice is not required for any of the proposed activities under the contemplated DOFAW-ORCD MOU on Phase One of the project, the instant declaration of exemption has been drafted for transparency at this stage.

Consulted Parties:

US Department of Agriculture, Natural Resources Conservation Service
US Department of Agriculture, APHIS-Wildlife Services

Exemption Determination: After reviewing § 11-200.1-15, HAR, including the criteria used to determine significance under HAR § 11-200.1-13, DLNR has concluded that the proposed outreach and educational activities under “Phase One” of this project would have minimal or no significant effect on the environment. DLNR hereby finds that “Phase One” project activities are categorically exempt from the HRS chapter 343 requirement to prepare an environmental assessment based on the following analysis:

1. All activities associated with “Phase One” have been evaluated as a single action.

Because this project involves activities that are precedent to later planned activities (i.e., the trapping and removal of feral pigs), the categorical exemption determinations here will treat all planned activities under Phase One as a single action under § 11-200.1-10, HAR.

2. All activities comprising “Phase One” appear to fall squarely within HAR § 11-200.1-16(a)(1) and are described by the following general types, parts, and specific item numbers from the revised 2020 DLNR Exemption List (Concurred on by the Environmental Council on November 10, 2020):

General Exemption Type 4

Minor alterations in the conditions of land, water, or vegetation.

PART 1:

Item #1. “Minor vegetation clearing and management, including mowing, pruning, trimming, and application of federal and state approved herbicides in conformance with label instructions.”

Item #7. “Minor ground adjustments (e.g., grading, grubbing, cutting, clearing, or filling) that do not require grading permits.”

Item #9. “Control of pests utilizing federal and state approved pesticides, herbicides, fungicides, and toxicants in conformance with label instructions; traps, snares, lures, and repellents; and other approved methods.”

General Exemption Type 5

Basic data collection, research, experimental management, and resource and infrastructure testing and evaluation activities that do not result in a serious or major disturbance to an environmental resource.

PART 1:

Item #16. “Research to identify, monitor, control, or eradicate introduced species.”

3. The cumulative impact of actions planned in “Phase One,” and the general impact(s) on particularly sensitive environments, are **not** expected to be significant.

The overall project goal is to reduce the damage caused by feral swine in Windward Oahu, by reducing its populations. The project design is to utilize low-impact trapping procedures designed to serve as cost-efficient alternatives to large scale fencing. The trap procedures and protocols will follow vetted quality control standards per the USDA-APHIS Wildlife Services (“WS”) operating procedures². WS-Hawai‘i will be conducting the direct control of feral swine using similar Feral Swine Management, Methods, General Practices, and Conservation Measures described in an earlier consultation for FSM at specific locations on Oahu: “Informal Consultation with the United States Department of Agriculture, Animal and Plant Health Inspection Service Wildlife Services (WS) for Feral Swine Management (FSM) Operations, Island of Oahu, Hawaii (01EPIF00-2018-I-0314).”

All traps are designed to be temporary, low-impact and highly mobile as they will be deployed in a variety of environments. Traps will use typical fence materials deployed on a smaller scale and moved opportunistically on the landscape. The impact will be less than the typical fence construction.

In selecting sites to deploy traps, minor alterations will be made to configure traps to comply with quality control standards set by the above referenced operating procedures. The minor adjustments will have no significant impacts to the environment. Deployment zones will occur in areas dominated by non-native flora to ensure valued ag resources are not impacted. . All traps are designed to be temporary, low-impact and highly mobile as they will be deployed in a variety of environments. Traps will use typical fence materials deployed on a smaller scale and moved

² ENVIRONMENTAL ASSESSMENT, Feral Swine Damage Management in Hawai‘i. March 2019. United States Department of Agriculture Animal and Plant Health Inspection Service Wildlife Services

opportunistically on the landscape. The impact will be less than the typical fence construction.

The project will collect relevant data related to the trapping program. The data will serve to measure quantifiable data to determine success, efficiency, and other parameters necessary to determine qualitative results to project administrators. This activity will have no significant impact or disturbance to project sites.

None of the “Phase One” project activities are anticipated to occur in any particularly sensitive environment. The activities will focus on low-elevation, agricultural lots where major human impact is already present.

Conclusion: Upon consideration of the MOU for “Phase One” of the Windward Oahu Feral Swine Control Project being approved by the Board of Land and Natural Resources (“BLNR”), and assuming that the BLNR Chairperson is delegated signatory authority on behalf of the BLNR at the same meeting, on _____, as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, ORCD’s involvement in Phase One will probably have minimal or no significant effect on the environment and is, therefore, exempt from the preparation of an environmental assessment. This conclusion is based on considerations including the cumulative impacts of planned successive actions in the same area and over time, and whether this action may be significant in a particularly sensitive environment.