

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

January 14, 2022

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

Authorize the Division of Forestry and Wildlife (DOFAW) to enter into a Memorandum of Agreement (MOA) with the Department of Transportation (DOT), Airports Division for use of a 1.3-acre portion of land at Kahului Airport, identified as a portion of Tax Map Key Number: (2) 3-8-001:019; Request Delegation of Authority to the Chairperson to Negotiate, Finalize and Execute the MOA Subject to Approval as to Form by The Department of the Attorney General, at Kahului, Maui, Hawaii.

APPLICANT

State of Hawaii Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife.

LEGAL REFERENCE

Sections 171-3 and -6, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Kahului, Maui, Hawaii, identified as a 1.3-acre, more or less, Portion of Tax Map Key (TMK) Number: (2) 3-8-001:019, as shown on the attached map labeled as **Exhibit 1**.

AREA:

Approximately 1.3 acres, more or less.

ZONING:

State Land Use District: Urban

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Encumbered by Governor’s Executive Order No. 2427 issued to the Department of Transportation for Kahului Airport.

Vacant, unimproved.

CHARACTER OF USE:

To construct, maintain, and operate parking facilities, security fencing, landscaping, and other facilities related to the operation of the DLNR Base Yard.

TERM OF MOA:

Unless otherwise terminated, modified, or cancelled, as provided for in the MOA, the term of the MOA shall be 65 years.

CONSIDERATION:

Gratis

HRS CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

The construction of DOFAW parking facilities, security fencing, landscaping, and other facilities at TMK No. (2) 3-8-001:019, was included in an Environmental Assessment (EA) that was prepared by the DLNR DOFAW in accordance with HRS Chapter 343. The final EA and Finding of No Significant Impact (FONSI) for the Pūlehunui Division of Forestry and Wildlife Baseyard were approved and published in the October 8, 2016, issue of the Office of Environmental Quality Control’s Environmental Notice.

DCCA VERIFICATION:

Not applicable. DOFAW and DOT are both State agencies or divisions thereof and are not required to register with DCCA.

REMARKS:

The Division of Forestry and Wildlife’s Maui Branch operates primarily out of its central baseyard, located in Kahului, Maui. The DOFAW baseyard is situated on a 3-acre portion of DLNR land, identified as TMK No. (2) 3-8-079:018, located at 685 Haleakala Hwy. The Kahului baseyard supports the core of DOFAW’s operations, including 57 civil service staff, 10-20 contractors, interns, and volunteers; office and administrative

functions; more than 80 vehicles and heavy equipment used for habitat management, road maintenance, and fire suppression; and warehouses that securely store essential equipment and supplies.

The baseyard area and facilities were established for use by DOFAW more than 40 years ago, when staffing and operational needs were considerably smaller. At current operational levels, space is inadequate for office and warehouse needs, covered storage of state vehicles and equipment, and for safe and appropriate locations for staff to park during business hours and while deployed on overnight assignments. To address these issues, DOFAW is developing plans to renovate and construct additional facilities within the baseyard. However, even with efficient renovations, the limited space available at the baseyard poses a challenge to improving adequate space and facilities.

Pursuant to planning efforts to address space limitations, DOFAW noted that a portion of lands managed by the Department of Transportation, Airports Division (DOT-A) directly adjacent to the baseyard, identified as a 1.3-acre remnant and portion of TMK No. (2) 3-8-001:019, was vacant, unimproved, and not planned for use by DOT-A in the foreseeable future. Through discussions with DOT-A, DOFAW reached an agreement that would enable the Division to use the 1.3-acre portion of the DOT-managed lands that are directly adjacent to the baseyard. The proposed terms for DOFAW's use of the portion of DOT-A lands are contained in a draft Memorandum of Agreement (**Exhibit 2**). The proposed MOA would enable DOFAW to construct, maintain, and operate parking facilities, security fencing, landscaping, and other facilities related to the operation of the baseyard for a term of 65 years, providing a highly significant and advantageous addition of available space to meet the Division's operational needs.

RECOMMENDATION:

That the Board:

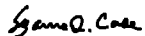
1. Authorize the Division of Forestry and Wildlife to enter into a Memorandum of Agreement with the Department of Transportation, Airports Division for use of a portion of Government lands situated at Kahului, Maui, Hawaii, identified as a 1.3-acre portion of TMK No. (2) 3-8-001:019, as shown on the attached map labeled as **Exhibit 1**, subject to the following:
 - A. The standard terms and conditions of the most current memorandum of agreement form, as may be amended from time to time;
 - B. Authorize the Chairperson to negotiate, finalize and execute or delegate authority to the Administrator of the Division of Forestry and Wildlife to execute, the Memorandum of Agreement, subject to approval as to form by the Department of Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



David G. Smith, Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

ATTACHMENTS:

- Exhibit 1. Kahului Baseyard and DOT Portion Map
- Exhibit 2. Draft Memorandum of Agreement and referenced attachments

Exhibit 1: MOA between DOFAW and DOT for use of 1.3 acres of TMK (2) 3-8-001:019.



**MEMORANDUM OF AGREEMENT
BETWEEN THE STATE OF HAWAII DEPARTMENT OF TRANSPORTATION
AND
THE STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL
RESOURCES
FOR USE OF A PORTION OF LAND AT KAHULUI AIRPORT**

THIS MEMORANDUM OF AGREEMENT (“MOA”) is made on _____, 2021, by and between the State of Hawaii Department of Transportation (“DOT”), by its Director, and the State of Hawaii Department of Land and Natural Resources (“DLNR”), by its Chairperson.

RECITALS

WHEREAS, DOT manages, operates, and maintains the Kahului Airport, Maui (“OGG”), pursuant to Hawaii Revised Statutes (“HRS”) Chapters 261, 262, 263, and 171; and

WHEREAS, DLNR presently occupies a portion of a parcel, identified as TMK No.: (2) 3-8-079:018, located on Haleakala Highway, for the DLNR Division of Forestry and Wildlife base yard and other related facilities (“DLNR Base Yard”); and

WHEREAS, DOT manages approximately 1.3 acres, more or less, within TMK No.: (2) 3-8-001:019 of vacant and unimproved land (“OGG Remnant”), described in Exhibit “A”; and

WHEREAS, the OGG Remnant is adjacent to the DLNR Base Yard and is not presently needed for aeronautical purposes; and

WHEREAS, DLNR desires to occupy the OGG Remnant to construct, maintain, and operate parking facilities, security fencing, landscaping, and other facilities related to the operation of the DLNR Base Yard (collectively “Improvements”).

NOW, THEREFORE, for and in consideration of DLNR’s construction of the Improvements on the OGG Remnant, and other good and valuable consideration, the receipt of which DOT hereby acknowledges, and the mutual covenants and promises herein made, the parties do hereby agree as follows:

1. Grant of Use and, Occupancy Rights. Pursuant to HRS § 261-7, DOT hereby grants to DLNR the right to use and occupy the OGG Remnant for the purpose of constructing, operating, and maintaining DLNR's Improvements at DLNR's own cost, expense, and responsibility. DLNR acknowledges and agrees that the Improvements, and use of the OGG Remnant, shall not result in the creation of any wildlife hazards to the operation of the Kahului Airport, in accordance with FAA Advisory Circular 150/5200-33B (Hazardous Wildlife Attractants On or Near Airports), as amended, which is attached as **Exhibit "B"**, and incorporated herein by reference. Furthermore, DLNR acknowledges and agrees that this MOA is for the limited purposes as described herein. Any intensification, to include modification or expansion, of the use of the OGG Remnant or Improvements, beyond what is approved herein shall require the prior written approval of the DOT, which approval may be withheld in the DOT's sole discretion, and may require a new request and consideration.

2. Right to Construct the Improvements. DLNR may construct, operate, maintain, alter, repair, remove, reconstruct, replacement, conduct upkeep work, or relocate the Improvements (collectively "**Construction**" or "**Construct**"), provided that DLNR submits to DOT, and obtains DOT's prior written approval for, the plans, drawings, and specifications related to the Improvements and the OGG Remnant, and provided further that DLNR shall not create or allow to be created any diminishment in the aesthetics of the OGG Remnant perimeter, including land along the street corridor, as reasonably determined by DOT. DLNR shall be solely responsible for all costs and expenses incurred in connection with the Improvements, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses. DLNR shall be responsible for any environmental assessments or environmental impact studies pursuant to HRS Chapter 343.

3. Work Permit. DLNR shall obtain a permit from DOT for any Construction for or related to the Improvements on the OGG Remnant prior to commencing such work. Without limiting the foregoing or any other provision

contained herein, DLNR shall comply with any and all requirements of the DOT relating to Construction, and shall obtain any required permits and/or approvals that may be required by federal, state, or county laws applicable to the Construction, with the exception of emergency repair or maintenance work (“**Emergency Work**”). DLNR may enter the OGG Remnant to perform Emergency Work without first obtaining such permit(s), provided that DLNR notifies DOT of the location and type of Emergency Work not later than one business day after the Emergency Work has commenced and provided that DLNR obtains any required permits as soon as reasonably possible thereafter. “**Emergency work**” shall mean immediate repair or maintenance work needed to protect public health, safety, welfare or the environment as reasonably determined by the DOT.

4. Work Completion. Upon the completion of any Improvements, DLNR shall promptly remove all equipment and unused or surplus materials. In addition, DLNR shall provide all as-built drawings of all work completed, including metes and bounds documents of the Improvements, for DOT’s acceptance within sixty (60) days of completion of the Construction.

5. Maintenance. DLNR shall, at its sole cost and expense, keep the Improvements and the OGG Remnant in a safe, clean, sanitary, and orderly condition, including, but not limited to, making all repairs to the Improvements, and shall not make, permit or suffer any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the OGG Remnant or the Improvements.

6. Repair. DLNR shall not damage, undermine or otherwise destroy any portion of the OGG Remnant. All repairs, restoration, and reconstruction shall be completed by DLNR prior to the termination of this MOA upon six (6) months prior written notice. DLNR and DOT shall coordinate the phase-out efforts.

7. No Obstruction. DLNR’s Construction of any landscaping, fencing or any portion of the Improvements (including any staging and/or temporary storing of equipment and materials) shall not: (a) unnecessarily obstruct aeronautical operations; (b) obstruct, in any way whatsoever, the sight lines and distances and view corridors

along state highways or public roadways within OGG; (c) otherwise constitute a hazard to users of OGG, as determined by DOT in its sole discretion; (d) obstruct state highway operations; (e) obstruct operations of any tenants or other permitted users of OGG; or (f) obstruct any line-of-sight determinations made by the DOT for the safe operation of OGG.

8. Fencing. DOT may install fencing along the portion of the OGG Remnant perimeter that fronts Haleakala Highway and Aalele Street, provided that the fencing shall not be installed within the OGG Remnant. DLNR may install security fencing with appropriate landscaping (e.g., Wax Ficus, Naupaka) to be consistent with the general landscape theme in the OGG vicinity.- If DOT installs a fence (e.g., white vinyl) , a minimum of three feet must separate the DLNR security fence from the DOT fence. DLNR agrees to ensure that it will erect a security fence on level ground that is wide enough to allow DOT to erect its fence on the same level ground area for the purpose of shielding DLNR's fence from the roadway so as to not create any diminishment in the aesthetics, as reasonably determined by DOT. DLNR proposes and DOT accepts the "DOFAW Vinyl and Chainlink Fence Exhibit (comprising of Exhibits 1-4)" as shown in Exhibit "C". DOT may plant additional landscape border along the fencing or within the property line of the OGG Remnant provided that such landscape border shall not unreasonably interfere with DLNR's use and occupancy of the OGG Remnant.

9. DOT Work Within or Affecting the OGG Remnant. If DOT is required to perform work of any kind required by applicable federal, state, or county laws, regulations, ordinances, or grant assurances, which affects the OGG Remnant, DOT will coordinate such work with DLNR. DLNR shall not prevent DOT from performing such work, provided, however, that DOT will take certain protective measures to assure that such work does not unreasonably interfere with DLNR's use of the OGG Remnant.

10. Investment. At a minimum, DLNR agrees to invest \$250,000 for the Construction of the Improvements, subject to the legislative appropriation for such

purpose and allotment of the funds by the executive budget process. In addition, DLNR agrees to a fifty (50) percent cost-share with DOT to erect a white vinyl fence (as shown in Exhibit "C"), subject to legislative appropriation for such purpose and allotment of the funds by the executive budget process.

11. Safety. DLNR shall at all times exercise due care for public safety, including the requirements of the Transportation Security Administration ("TSA"), Federal Aviation Administration, or by any other federal, state and county authority.

12. Irrigation. DOT has an underground drip irrigation system located in a portion of the OGG Remnant, which will be deactivated when DLNR informs DOT when DLNR will proceed with groundwork in the area. DLNR agrees to work with DOT in the coordination of modifying the layout of this irrigation system, if necessary, prior to DLNR proceeding with groundwork in the area.

13. Abandonment. This MOA and all of DLNR's rights hereunder shall terminate, without any action on the part of the DOT, in the event of non-use or abandonment by DLNR of the OGG Remnant or the Improvements, or any portion thereof, for a period of five (5) years.

14. Hazardous Substances.

a. Definitions. For purposes of this MOA, DLNR acknowledges and agrees that the following terms shall have the following meanings:

"**Environmental Laws**" shall mean all federal, state and local laws of every nature including statutes, ordinances, rules, regulations, codes, notices, standards, directives of every kind, guidelines, permits, licenses, authorizations, approvals, interpretations of the foregoing by any court, legislative body, agency or official, judicial decisions, judicial and administrative orders, rulings or judgments, or rules of common law which currently are in effect or which may come into effect through enactment, issuance, promulgation, adoption or otherwise, which in any way pertain to, relate to, or have any relevance to the environment, health or safety. These environmental laws include, but are not limited to, regulations and orders of the federal Environmental Protection Agency and the State Department of Health.

“Hazardous Substance” shall include any chemical, substance, radioactive materials, organic or inorganic material, controlled substance, object, condition, waste, living organism, or combination thereof which is, may in the future be, or has been determined by state or federal authority under any Environmental Law to be hazardous to human health or safety or detrimental to the environment. This term shall include, but not be limited to, petroleum hydrocarbons, asbestos, radon, polychlorinated biphenyls, methane, fuels of any kind, and other materials or substances that are, or may in the future be, regulated by the state or federal authorities.

b. DLNR’s Activities and Duties.

b. 1. Compliance with Environmental Laws. DLNR agrees, at its sole expense and cost, to comply with all Environmental Laws applicable to the OGG Remnant and Improvements and DLNR’s occupancy, activities, operations, and use of the OGG Remnant, including giving all required notices, reporting to, and obtaining permits from, all appropriate authorities.

b. 2. Hazardous Substances. DLNR shall not use, store, treat, dispose, discharge, release, generate, create, or otherwise handle any Hazardous Substances, or allow the same by any of its officers, employees, agents, contractors, guests, invitees or third persons, on the OGG Remnant.

b. 3. Notice to DOT. DLNR shall keep DOT fully informed at all times regarding all matters related to any Environmental Laws affecting the OGG Remnant or the Improvements.

b. 4. Disposal/Removal. Except as to the possession and handling of Hazardous Substances for which DLNR is authorized by law, including those Hazardous Substances for which DLNR has obtained all currently required permits to store or use certain Hazardous Substances on the OGG Remnant, DLNR shall cause any Hazardous Substances to be removed and transported from the OGG Remnant for disposal solely by duly licensed hazardous substances transporters to duly licensed facilities for final disposal as required by all applicable Environmental Laws.

b. 5. Environmental Investigations and Assessments. DLNR, at its sole cost and expense, shall cause to be conducted such investigations and assessments of the OGG Remnant to determine the presence of any Hazardous Substance on the OGG Remnant, as may be reasonably directed from time to time by DOT, or by any federal, state or county authority.

b. 6. Remediation. In the event that any Hazardous Substance is used, stored, treated, or disposed on the OGG Remnant, or any location off the OGG Remnant to which it is determined any Hazardous Substance has migrated, or handled, discharged or released by DLNR, DLNR shall, at its sole expense and cost, remediate such Hazardous Substance in accordance with subparagraph 14.b.4. (Disposal/Removal) of this MOA.

b. 7. Tanks, Pipelines; Inspections and Repairs. Unless DOT specifically agrees in writing prior to any construction of Improvements, all pipes, pipelines, tanks, containers, or conduits of any kind that may at any time have contained, or may have been intended to contain, Hazardous Substances of any type (hereafter referred to as a "facility" or "facilities"), must be installed above ground level in such manner that allows for periodic inspection and maintenance of the facility for purposes of determining the existence of leaks and discharges from, and deterioration of any kind to, and that allows repair of, the facility. DLNR shall provide DOT with prior written notice of DLNR's intent to install a facility to allow the DOT ample time, as reasonably determined by the DOT, to inspect the plan for installation of such a facility. Said facility shall not be installed unless and until the facility and its manner of installation are approved in writing by DOT.

b.8. Protection of Waters and Land. DLNR shall maintain and employ reasonable debris, pollution and contamination control measures, safeguards and techniques on the OGG Remnant to prevent debris, pollution or contamination to ocean waters, streams or waterways, groundwater, including any storm drains within and about the OGG Remnant and land, resulting from the activities or operations of DLNR. DLNR shall take immediate corrective action in the event of an unauthorized

release of Hazardous Substances by DLNR to immediately remove or correct the cause of such release, and shall immediately clean the OGG Remnant and affected areas and surrounding waters and land of such Hazardous Substances, pollutants or contaminants to levels satisfactory to appropriate governmental, all at DLNR's own cost and expense.

b. 9. [Reserved]

15. [Reserved]

16. Termination, Amendment, Cancellation. Subject to the provisions under paragraphs 22 and 23, which shall take precedence over this paragraph 16, the parties may terminate, amend, or cancel this MOA in whole or in part at any time, with reasonable cause, by the mutual agreement of the parties during the term of this MOA.

17. Removal upon Termination. Upon any full or partial termination or cancellation of this MOA, DLNR shall, at DLNR's sole cost and expense, comply with the provisions of subparagraph 17.a. and, if applicable at DOT's sole option, subparagraph 17.b.

a. Remove and Restore. DLNR shall surrender the OGG Remnant upon termination of this MOA and, prior thereto, shall restore the OGG Remnant to the same condition as the OGG Remnant existed at the commencement of this MOA, as determined by DOT, reasonable wear and tear excepted. Said surrender and restoration shall be at the sole cost and expense of DLNR.

b. DOT's Option. At DOT's sole option, DLNR may abandon in place the Improvements, equipment, facilities, components and appurtenances relating thereto.

18. Responsibility. DLNR shall be responsible for damage or personal injury resulting from acts or omissions of DLNR's employees, its contractors, subcontractors, guests and invitees, to the extent that DLNR's liability for such damages or injury has been determined by a court or otherwise agreed to by DLNR. DLNR 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 process.

DLNR's financial obligation and commitment to make payment or reimbursements of any kind under this MOA shall be contingent upon the availability and allotment by the Director of the Department of Budget and Finance of public funds to DLNR to make such payment or reimbursement.

19. Assignment. DLNR's rights under this MOA shall not be sold, assigned, conveyed, leased, subleased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of DOT.

20. [Reserved]

21. Compliance with Laws. Without limiting any provision in this MOA, DLNR, at all times during the term of this MOA, shall comply with all of the requirements of the federal, state, and county authorities and shall observe all federal, state and county laws, statutes, ordinances, rules and regulations, now in force or which may hereafter be in force, including, but not limited to, all laws and regulations applicable to the use of areas within the OGG Remnant, highway right-of-way and/or federal-aid highways.

22. Repossession. In accordance with HRS §261-7, DLNR acknowledges that the OGG Remnant may be repossessed by DOT when the land is needed for aeronautical purposes, provided that DOT gives DLNR not less than six (6) months written notice of DOT's intention to repossess.

23. FAA Requirements. DLNR shall be subject to the following FAA provisions:

a. DLNR, its successors, and assigns, does hereby covenant and agree that: (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; (ii) that in the Construction of the Improvements on, over, or under the OGG Remnant, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected

to discrimination; (iii) DLNR shall use the OGG Remnant in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.

b. DOT reserves the right to further develop or improve the landing area (meaning the airfield and related improvements for the airfield over time) of OGG as it sees fit, regardless of the desires or views of DLNR and without interference or hindrance.

c. DOT reserves the right but shall not be obligated to the DLNR, to maintain and keep in repair the landing area of OGG and all publicly owned facilities of OGG, together with the right to direct and control all activities of DLNR in this regard.

d. This MOA shall be subordinate to the provisions and requirements of any existing or future agreement between DOT and the United States, relative to the development, operation, or maintenance of OGG. Failure of the DLNR to comply with the requirements of any existing or future agreement between the DOT and the United States, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of DLNR's rights under the MOA.

e. A right of first refusal shall be subordinate to the DOT's agreements with the United States requiring that the airport serve an airport purpose and such right shall not prevent airport land from being used for an airport purpose or its use by an aeronautical user; furthermore, a right of first refusal to convert land to a non-aeronautical use shall not be exercised without the written approval of the FAA.

f. There is reserved to the DOT, its successors and assignees, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the OGG Remnant. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used

for navigation or flight through said airspace or landing at, taking off from, or operating on the airport premises.

g. DLNR agrees to comply with the notification and review requirements covered in 14 CFR Part 77 of the Federal Aviation Regulations (attached as Exhibit "D" and incorporated herein) in the event future construction of a building is planned for the OGG Remnant or in the event of any planned modification or alteration of any present or future building or structure situated on the OGG Remnant.

h. DLNR, by accepting this MOA, expressly agrees for itself, its successors and assignees that it will not erect nor permit the erection of any structure or building nor permit any natural growth or other obstruction on the land permitted hereunder above a height as determined by the application of the requirements of Title 14 CFR Part 77¹. In the event the aforesaid covenants are breached, DOT reserves the right to enter upon the land hereunder and to remove the offending structure or object or cut the offending natural growth, all of which shall be at the expense of the DLNR.

i. DLNR by accepting this MOA agrees for itself, its successors and assignees that it will not make use of the OGG Remnant in any manner which might interfere with the landing and taking off of aircraft or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the DOT reserves the right to enter upon the premises hereby permitted and cause the abatement of such interference at the expense of DLNR.

j. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 United States Code Sections 40103 (e), concerning the use of an air navigation facility on which federal government money has been expended, and 47107(a)(4), concerning the provision of aeronautical services to the public.

¹ The height restriction shall be two hundred and nine (209) feet above mean sea level over the OGG Remnant, as required under Title 14 CFR Part 77, as amended.

k. This MOA and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the airfield and other nonexclusive use areas of the airport or the exclusive or nonexclusive use of the airfield and other nonexclusive use areas of the airport by the United States during a time of war or national emergency.

l. DLNR will conform to airport and Federal Aviation Administration safety and security rules and regulations regarding use of the airport and the airfield operations area including runways, taxiways, aircraft aprons by vehicles, employees, customers, visitors, etc. in order to prevent security breaches and avoid aircraft incursions and vehicle/pedestrian deviations; will complete and pass an airfield safe driving instruction program when offered or required by the airport; and will be subject to penalties as prescribed by the airport for violations of the airport safety and security requirements.

24. Term. Unless otherwise terminated, modified, or cancelled, as provided for in this MOA, the term of this MOA shall be 65 years.

25. [Reserved]

26. Counterparts. This instrument may be executed in two or more counterparts, and when all counterparts have been executed, each counterpart shall be considered an original but when assembled shall constitute one and the same instrument, and shall have the same force and affect as though all the signatories had executed a single instrument. Any unexecuted duplicate pages may be omitted from the assembled original document.

27. [Reserved]

28. Severability. In the event that any provision of this MOA is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.

29. No Third-Party Beneficiaries. No third-party beneficiaries are intended by this MOA, and the terms and provisions of this MOA shall not give rise to any right in third parties to enforce the provisions of this MOA.

30. [Reserved]

IN WITNESS WHEREOF, the undersigned have executed this MOA the day and year first above written.

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

By _____
JADE BUTAY
Its Director of Transportation

APPROVED AS TO FORM:

Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL
RESOURCES

Department of Land and Natural Resources
Its Chairperson

APPROVED AS TO FORM:

Deputy Attorney General