

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 14, 2023

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

OAHU

Authorize Chairperson to Negotiate, Approve and Execute a Memorandum of Agreement Between the Department of Land and Natural Resources and the State of Hawaii Department of Agriculture Regarding the Funding of Due Diligence for the Proposed Acquisition of the Wahiawa Irrigation System, Wahiawa Dam, Spillway and Appurtenant Works, and the Lake Wilson Reservoir. Tax Map Keys (1) 7-3-001-003, 019; 7-3-006-023; 7-3-007-001; 7-3-008-001; 7-3-010-003; 7-3-011-003, 006, 007; 7-3-012-002, 006; 7-4-001-003; and 7-4-012-001.

Delegate to the Chairperson the Authority to Negotiate, Approve and Execute Additional Agreements and Contracts Regarding the Conducting of Due Diligence for the Proposed Acquisition of the Wahiawa Irrigation System, Wahiawa Dam, Spillway and Appurtenant Works, and the Lake Wilson Reservoir.

BACKGROUND

The proposed acquisition contemplates the Department, the Hawaii Department of Agriculture (DOA) and the Agribusiness Development Corporation (ADC) acquiring the Wahiawa Irrigation System, Wahiawa Dam, Spillway and Appurtenant Works, and the Lake Wilson Reservoir from owners Dole Food Company, Inc. and Sustainable Hawaii, LLC. The purpose of the acquisition is to preserve the system to support agricultural activities in the region and provide public recreational opportunities. The Department may acquire the Lake Wilson Reservoir to expand the Wahiawa Freshwater State Recreation Area under the Division of State Parks. ADC would acquire the Wahiawa irrigation system, consisting of the ditch system, outlet works and control tower. DOA would acquire the Wahiawa Dam, Spillway and Appurtenant Works, repair and upgrade the dam to comply with dam safety standards and then transfer those assets to ADC to own, manage and operate. The current Senate Bill 833, which proposes to authorize and fund the acquisition project, provides more information and can be accessed at the following link:

https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=SB&billnumber=833&year=2023

Funding was initially provided pursuant to Act 88, Session Laws of Hawaii (SLH) 2021 as amended by Act 248, SLH 2022, appropriating \$26,000,000.00 in general funds to agricultural resources management for the acquisition of the Wahiawa Irrigation System,

Wahiawa Dam and Spillway and Lake Wilson Reservoir. The amount was later amended via Governor's line-item veto to \$3,500,000.00 limited to conducting due diligence for the acquisition.

REMARKS:

The Department seeks to utilize \$1,200,000.00 to conduct due diligence for the parcels comprising the Lake Wilson Reservoir area. In order to receive the funds, the Department seeks to execute a Memorandum of Agreement (MOA) with DOA, a draft of which is attached as **EXHIBIT A**. The Department will use the funds to obtain a survey of the targeted parcels, including identifying potential encroachments. The Department will also contract for Phase I and II (if necessary) environmental site assessments and other related reports such as soil and water quality studies. Therefore, staff requests that the Board authorize the Chairperson to further negotiate, approve and execute the MOA with DOA to receive the funds.

Additionally, staff also requests that the Board delegate to the Chairperson the authority to negotiate, approve and execute additional agreements and contracts regarding the conducting of due diligence for the proposed acquisition. Given the complexity of this acquisition, additional due diligence may be necessary and delegating the authority to the Chairperson would greatly expedite staff's ability to conduct necessary due diligence. Staff stresses that the proposed delegation would expressly exclude the acquisition of land. If staff concludes that such acquisition is appropriate, staff will return to the Board for approval and provide a full report on the results of the due diligence and recommend any conditions that the Board should impose as part of its approval.

RECOMMENDATION: That the Board:

- 1) Authorize the Chairperson to negotiate, approve and execute a Memorandum of Agreement between the Department the State of Hawaii Department of Agriculture regarding the funding of due diligence for the proposed acquisition of the Wahiawa Irrigation System, Wahiawa Dam, Spillway and Appurtenant Works, and the Lake Wilson Reservoir.
- 2) Delegate to the Chairperson the Authority to Negotiate, Approve and Execute Additional Agreements and Contracts Regarding the Conducting of Due Diligence for the Proposed Acquisition of the Wahiawa Irrigation System, Wahiawa Dam, Spillway and Appurtenant Works, and the Lake Wilson Reservoir.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL



Dawn N.S. Chang, Chairperson

RT

MEMORANDUM OF AGREEMENT BETWEEN THE
STATE OF HAWAII, DEPARTMENT OF AGRICULTURE, AND
THE STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES,
REGARDING THE FUNDS FOR PLANS FOR THE WAHIAWA IRRIGATION SYSTEM,
WAHIAWA DAM AND SPILLWAY, AND LAKE WILSON RESERVOIR DUE DILIGENCE
ASSESSMENT, HAWAII

This MEMORANDUM OF AGREEMENT (MOA) effective as of January 1, 2023
(Effective Date), is by and between the STATE OF HAWAII, DEPARTMENT OF
AGRICULTURE (HDOA), and the STATE OF HAWAII, DEPARTMENT OF LAND AND
NATURAL RESOURCES (DLNR).

RECITALS

WHEREAS, Act 88, Session Laws of Hawaii 2021 as Amended by Act 248, Session Laws of Hawaii 2022 appropriated \$26,000,000.00 in general funds to agricultural resource management (AGR141), which was further amended via Governor’s line-item veto to \$3,500,000.

WHEREAS, these appropriated funds will allow the State of Hawaii (“State”), through the Department of Agriculture (HDOA), the Department of Land and Natural Resources (DLNR) and the Agribusiness Development Corporation (ADC) to conduct due diligence for the potential acquisition of the Wahiawa Irrigation System, the Wahiawa Dam, Spillway and Appurtenant Works and the Lake Wilson Reservoir(Project).

WHEREAS, the Wahiawa Dam, Spillway and Appurtenant Works, Wahiawa Irrigation System (including the Dam Outlet Works and Control Tower) and Lake Wilson Reservoir consist of the parcels identified as follows, along with the State agency responsible for conducting the due diligence:

Wahiawa Dam, Spillway and Appurtenant Works, due diligence conducted by HDOA:
TMK (1) 7-1-012:014 and 7-3-007:001 (por.)

Wahiawa Irrigation System (including the Dam Outlet Works and Control Tower), due diligence conducted by ADC:
TMK (1) 7-1-001:013 & 017; 7-1-012:003, 004 & 007; 7-3-005:005; 7-3-013:003

Lake Wilson Reservoir, due diligence conducted by DLNR
TMK (1) 7-3-001:003 & 019; 7-3-006:023; 7-3-007:001 (por.); 7-3-008:001; 7-3-010:003; 7-3-011:003, 006, & 007; 7-3-012:002 & 006; 7-4-001:003 and 7-4-012:001

WHEREAS, this project is necessary to assess the feasibility of the State acquiring, upgrading, operating, and maintaining the Wahiawa Irrigation System, Wahiawa Dam, Spillway and Appurtenant Works, and the Lake Wilson Reservoir.

WHEREAS, DOA will be responsible for the completion of the Wahiawa Dam, Spillway and Appurtenant Works due diligence assessment, ADC will be responsible for the completion of the Wahiawa Irrigation System (including the Dam Outlet Works and Control Tower) due diligence assessment, and DLNR will be responsible for the completion of the Lake Wilson due diligence assessment portions of the Project.

WHEREAS, if this project determines it is feasible for the State of Hawaii to acquire, upgrade, operate, and maintain the Wahiawa Irrigation System, Wahiawa Dam, Spillway and Appurtenant Works, and Lake Wilson Reservoir, the State of Hawaii may acquire the Wahiawa Irrigation System, Wahiawa Dam, Spillway and Appurtenant Works, and Lake Wilson Reservoir.

WHEREAS, if the State of Hawaii acquires the Wahiawa Irrigation System, Wahiawa Dam, Spillway and Appurtenant Works, and Lake Wilson Reservoir, HDOA may plan, design and construct repairs and improvements to the Wahiawa Dam, Spillway and Appurtenant Works to bring the dam, spillway and appurtenant works into compliance with all relevant safety requirements. HDOA will then turnover the ownership, operation and maintenance of the Wahiawa Dam, Spillway and Appurtenant Works to ADC.

WHEREAS, if the State of Hawaii acquires the Wahiawa Irrigation System, Wahiawa Dam, Spillway and Appurtenant Works, and Lake Wilson Reservoir, the Wahiawa Irrigation System (including the Outlet Works and Control Tower), and the Wahiawa Dam, Spillway and Appurtenant Works will be owned, operated and maintained by ADC. The Lake Wilson Reservoir will be owned and maintained by the State of Hawaii Department of Land and Natural Resources.

NOW, THEREFORE, in consideration of the promises contained in this MOA, the Parties agree as follows:

1. Term. This MOA shall remain in effect until the Project is completed or January 1, 2024, unless sooner terminated by either Party in accordance with Section 7 of this MOA. This MOA shall automatically renew for successive terms of one year unless either Party provides thirty days written notice to the other Party of its intent not to renew.
2. Due Diligence Assessment Services.
 - a. DLNR shall complete all work associated with the Lake Wilson Reservoir Due Diligence Assessment. The intent of the Lake Wilson Reservoir Due Diligence Assessment is to determine the feasibility of acquiring, upgrading, operating, and maintaining the Lake Wilson Reservoir.

- b. The Lake Wilson Reservoir Due Diligence Assessment should include, but is not limited to the following:
 - 1) Land Survey. Completion of an encroachment assessment report and preparation of survey map and description for all parcels to be acquired by DLNR.
 - 2) Phase I and II Environmental Site Assessment. Completion of Phase I and II environmental site assessment and associated hazard assessments and water quality studies.
 - 3) DLNR shall submit to DOA a final Lake Wilson Reservoir Due Diligence Assessment Report. The final Lake Wilson Reservoir Due Diligence Assessment Report will become a part of the final Wahiawa Dam, Spillway and Appurtenant Works, Wahiawa Irrigation System and Lake Wilson Reservoir Due Diligence Assessment Report.
3. Compensation. HDOA shall compensate DLNR with a lump sum amount of \$1,200,000 in the third quarter of fiscal year 2023 for the completion of the Lake Wilson Reservoir Due Diligence Assessment Report.
4. HDOA's Responsibilities.
 - a. HDOA shall pay the compensation amount of \$1,200,000 via journal voucher to DLNR.
 - b. HDOA shall be responsible for compiling the Wahiawa Irrigation System, Wahiawa Dam and Lake Wilson Reservoir Due Diligence Assessment document, based on the information developed and submitted by DLNR.
5. DLNR's Responsibilities.
 - a. DLNR shall be responsible for the completion of the Lake Wilson Reservoir Due Diligence Assessment.
 - b. DLNR shall be responsible for providing sufficient staff to complete the Lake Wilson Due Diligence Assessment.
 - c. DLNR shall be responsible for the acquisition of a consultant to assist with the development of the Lake Wilson Reservoir Due Diligence work, should DLNR determine that the assistance of a consultant is necessary.
 - d. DLNR shall retain overall project management responsibilities for the completion of the Lake Wilson Reservoir Due Diligence Assessment.
6. Amendment. This MOA may not be amended or modified except by written supplemental agreement executed by all of the Parties.
7. Termination. Any Party may terminate this MOA upon thirty days written notice to the other Parties.

8. Counterparts. This MOA may be executed in one or more counterparts, each of which shall be deemed an original, and said counterparts will together constitute one and the same agreement and shall be binding on each of the Parties notwithstanding that all of the Parties are not signatory to the original or the same counterpart. The submission of a signature page by facsimile transmission, or similar electronic submission facility (e.g., e-mail or electronic signature) shall be deemed to constitute an “original” signature page for all purposes (other than recordation), and facsimile or electronic copies shall be deemed to constitute duplicate originals.
9. No third-party beneficiaries. No person or entity is intended to be a third-party beneficiary of this MOA.
10. DLNR’s Financial Obligation and Commitment. DLNR’s financial obligation and commitment to make payments or reimbursements of any kind under this MOU shall be contingent upon the availability and allotment by the Director of the Department of Budget and Finance of public funds to the Department of Land and Natural Resources to make such payment or reimbursement.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

STATE OF HAWAII, DEPARTMENT OF AGRICULTURE

STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES

By: _____

By: _____

Its Chairperson

Its Chairperson

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Deputy Attorney General

Deputy Attorney General

